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**By his Wife and Daughter**

**A. M. BOARDMAN and ELLEN D. WILLIAMS**

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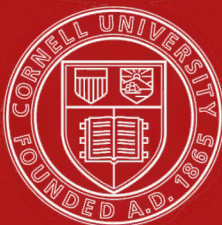
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History of the High Court of Chancery :a



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# HISTORY

OF THE

## HIGH COURT OF CHANCERY

AND OTHER

### INSTITUTIONS OF ENGLAND,

FROM THE

TIME OF CAIUS JULIUS CÆSAR UNTIL THE ACCESSION  
OF WILLIAM AND MARY (IN 1688-9,)

BY

CONWAY ROBINSON.

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VOLUME I.

TO THE DEATH OF HENRY VIII, (1546-7.)

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RICHMOND:  
J. W. RANDOLPH & ENGLISH.  
Baltimore: CUSHINGS & BAILEY. Philadelphia: T. & J. W. JOHNSON & Co.  
Boston: LITTLE, BROWN & Co.

1882.

*M 10936,*

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PRINTER,  
RICHMOND, VA.



## P R E F A C E.

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Contemplating a treatise upon "Equity in England and the United States," I was, in 1877 and 1878, examining cases upon the subject and arranging the matter in appropriate chapters. In tracing equitable jurisdiction I became more and more sensible of the want of a *good history* of the High Court of Chancery in England.<sup>1</sup> Of it there was in 'Story's Equity Jurisprudence' but little; in Spence's 'Equitable Jurisdiction' a good deal more, yet needing modifications, additions and improvements. What seemed desirable in such a history I was, for some time, hoping to give, and trying to give, in the first part of the treatise mentioned above (in the first line), as contemplated. In the fall of 1879 I came to the conclusion that the 'history' should be a separate work, and be from the time of Cæsar's invasion of Britain; that it should, as stated in tit. vi, p. 744, notice in chronological order all who sat upon the English bench previously to the time when there was 'a settled *court of equity* before the chancellor,' and should, during the whole period embraced in the history, take particular notice not only of 'Lord Chancellors and keepers of the Great Seal' but also of masters of the Rolls and other masters in Chancery, and the Registrars. That, besides treating of the High Court of Chancery, the history should embrace other institutions of England was deemed proper—and in some measure was found necessary—because of the Chancellor's part in moulding those institutions, and the connection therewith of the Chancery. And it was fit that the history should, to a limited extent, be illustrated 'by surrounding circumstances.'

From Cicero's letters it appears that Trebatius, whom he mentions as having '*perfect knowledge of the civil law*,' was with Cæsar in the city which had at that time in Gaul the name of Samarobriua and is now in France the city of Amiens; yet it may reasonably be concluded that *Trebatius returned to Rome without having gone into*

<sup>1</sup> There was want of much more than could be found in the small volume by Samuel Burroughs in 1726, entitled "The History of the Chancery, relating

to the Judicial power of that court and the rights of the master"; or in any other volume of "The History of the Chancery."

*Britain.*<sup>2</sup> After, however, Britain became a province of Rome, and under the *lex provincie*, Eburacum (York) was the seat of government. There Æmilius Papinianus, the famous lawyer, "had his tribunal seat"; and there his life was ended in the year 212.<sup>3</sup>

"The power of the imperial law" continued in Britain "for three hundred and sixty years or thereabouts—that is, from the reign of Claudius Cæsar down to the empire of Honorius Augustus, or to the time when Rome was taken by Alaric, the Goth."<sup>4</sup>

In one respect my view<sup>5</sup> is in accordance *not* with Sir John Fortescue, Sir John Popham, and Sir Edward Coke but with Sir Francis Bacon, John Selden, and Sir John Holt, three men of no less learning and ability than the first-named three. To the language of Fortescue, Popham and Coke, referred to on p. 29, the plain answer is that "during all that time" mentioned by Fortescue, England was *not* 'constantly governed by the same customs' as in Fortescue's time, but in her customs and laws '*some alteration*' was made by some kings or conquerors, 'especially the Romans'; and that the rule of determination which had prevailed before, continued to prevail after 411 until altered, and except so far as altered, by sufficient authority.<sup>6</sup>

As Selden says "it could not" "otherwise fall out but that some remains of the imperial laws, which through so constant a custom had prevailed" in Britain "for so many past ages, should, at least, in some measure subsist in that new or lately settled government which owed its rise to the will of the people."<sup>7</sup>

Which is quite consistent with Lord Bacon's observation:

"That our laws are as mixed as our language; and as our language is so much the richer on that account so are the laws more complete."<sup>8</sup>

The Lord Chief Justice Popham is indeed reported in the reign of Jac. I as saying, in commendation of the laws of England:

"That they had *continued as a rock, without alteration*, in all the varieties of people that had possessed this land, namely: the Romans, Brittons, Danes, Saxons and Normans."<sup>9</sup>

<sup>2</sup> See *post*, ch. I, § 2, p. 11 to 15.

<sup>3</sup> *Id.*, § 7, pp. 21, 22.

<sup>4</sup> *Id.*, § 9, p. 25.

<sup>5</sup> In *Id.*, § 11, p. 28 to 31.

<sup>6</sup> Dr. Wooddesson, referring to the period before 411, says; "At the close of that period it is not very probable that any other rule of determination should

be often referred to, or be much regarded, besides the laws of Rome."

<sup>7</sup> Wood. Inst. lxvi, p. 81, edi. 1834.

<sup>8</sup> *Id.*, p. 28.

<sup>9</sup> *Id.*, p. 30.

<sup>9</sup> For which, in *Le Case del Union*, Moore 797, he cited "Fortescue's book of the laws of England."

And something very like this is repeated from Fortescue by Sir Edward Coke.<sup>10</sup> But the Lord Chief Justice Holt, when he delivered the opinion of the King's Bench in 1701, so far from supposing that the laws of England had continued "*without alteration* in all the varieties of people that had possessed this land," mentions an "alteration made in the time of Henry I"; and referring to 1 Inst. 11a, says:

"Coke had not seen the laws of H. I then; and the red book in the chequer that he contradicts is very ancient, and of great authority in law. But this law did not continue long, but was altered between the reigns of H. I and H. II."<sup>11</sup>

Afterwards, referring "to the authenticks of Justinian, Nov. 112, c. 2, he says:

'This case is not within the reason of *Justin.* Novels before mentioned; and admit it were, nothing of the civil law is admitted or obligatory here in England, *quatenus* it is the civil law; but if it be of any force here it is because it was anciently received here in England; and this law could not be received here anciently. The bkoos of *Justinian* were made between 500 or 600 years after Christ, and were received for laws during forty years after their making, and practised in all the Eastern empire; his Pandects were in Latin, as the Roman law was, but the authenticks were in Greek. And after Justinian the II and Maurice the emperor they were rejected for 200 years till Basilick, the emperor, who laid them altogether aside and made a new book of his own called the Basilick, from his own name, which were in force till the taking of Constantinople by Mahomet the Great; so that till the year 1452 they were neglected in the Eastern Empire. *In the year 1125 they were found by Lothaire the II at the siege of Amalcarr, and till then were not heard of in the Western Empire; nor was it possible they could, for it was for all that time overrun with the Goths and Vandals. And presently after they were found at Amalcarr they were sent to the University of Boulogne to be taught. Vide Seld., 497, and his notes upon Fortescue, 11, 12, and Dr. Duck's use of the civil law lib. 1, c. 6. So that Henry the first beginning his reign in England in the year 1100, and these laws being found in the year 1125, could not be of force in England in his time.*<sup>12</sup>

When Mr. Spence wrote page 24 of ch. 4 of his first book he did not have in view either this opinion of Lord Holt or that of Hale, C. B., in *Collingwood v. Pace*. 1 Ventr., 414. In chapter 10 of the present work, § 3, p. 169 to 171, those cases are examined in connec-

<sup>10</sup> Preface to 2 Rep., pp. vii, viii; 623, 624.

Preface to 3 *Id.*, xxi; Preface to 6 *Id.*, p. iv.

<sup>12</sup> *Id.*, p. 625. S. C., in 1 P. Wms, 50, 51, is cited *post* in ch. 10, § 3, p. 171.

<sup>11</sup> *Blackborough v. Davis*, 12 Mod.



tion with that page of Mr. Spence as to the law of descents of Britons, Romans, Germans, Normans and English. In the next section (§ 4, p. 172 to 175) is noticed the discovery at Amalfi, about 1137, of a copy of the Pandects; and also the fact that in less than ten years afterwards Vacarius read lectures on civil law at Oxford; and the result of its study. As to it (the civil or Roman law) it is stated in 1 Spence's Eq., 347, that, "in the reign of Ric. II," "the judges prohibited it from being any longer cited in the common law tribunals"; but the inaccuracy of this statement is shown in ch. 21, § 5 and 6, pp. 724, 725.<sup>13</sup> Two centuries after Richard's reign Lord Holt said:

"Inasmuch as the laws of all nations are doubtless raised out of the ruins of the civil law, as all governments are sprung out of the ruins of the Roman Empire, it must be owned that the principles of our law are borrowed from the civil law, and therefore grounded upon the same reason in many things. And all this may be, though the common law be time out of mind."<sup>14</sup>

These *general* observations, and others more *special*, in the present volume may be viewed in connection with what has come from a recent writer of great value. It "may be that of 'Roman legislation'—of 'Romano-British law'—England has more than Professor Stubbs seems to suppose;<sup>15</sup> and it may be that whether in the parliament of 38 Edw. III (1364-5) the King himself made the speech which led to the enactment against the papal court is a matter as to which there is some evidence that Mr. Stubbs has not seen;<sup>16</sup> although that gentleman is of uncommon learning and accuracy, and has produced an exceedingly valuable work. The writer of the present volume, in searching for truth and endeavouring to supply omissions and remove or diminish errors, has often been assisted in coming to a conclusion, and been strengthened in his conviction of its soundness, by what he could extract from that eminent historian.

The *history* of the Institutions of England, by whatever name they may be known, and whether they be called a Constitution or not, is a large and important subject; of great interest to inhabitants of very considerable portions of the world. To a friendly correspondent,

<sup>13</sup> On p. 725, where Mr. Spence is rightly mentioned as so stating, there is a plain error in saying, that "for this statement Mr. *Stubbs* cited prominently Rot. Parl. ii, Ric. II"; Mr. *Stubbs* having in fact no part either in the statement

or the citation. The word *Stubbs* there should be struck out, and *Spence* inserted.

<sup>14</sup> *Lane v. Cotton*, 12 Mod. 482.

<sup>15</sup> See *post*, ch. I, § 11, p. 30.

<sup>16</sup> Ch. 19, § 43, pp. 608, 609.

whom I have not had the pleasure of seeing (except in his photograph)—to Lord *Bramwell*, who for his country's good has been in the Court of Exchequer, and in the *High Court* (established when the Exchequer was abolished), and is now elevated to the House of Lords—I am obliged for his being so thoughtful as to send me (what I learn is much admired in England) a copy of the new edition of Mr. Walter Bagehot's volume on the "English Constitution." Dealing with the present, more than the past, of the "Constitution," the 19 pages which Mr. Bagehot employs in "Its History," begin thus.

"A volume might seem wanted to say anything worth saying on the *History* of the English Constitution, and a great and new volume might still be written on it, if a competent writer took it in hand."

Mr. Bagehot, in 1878,<sup>17</sup> knew of Professor Stubbs's volume of "Select Charters"<sup>18</sup> but may not have examined—perhaps not seen—the subsequent work in three volumes,<sup>19</sup> wherein Professor Stubbs recognizes that "the truth, the whole truth, and nothing but the truth is what history would extract from her witnesses";<sup>20</sup> and at the close of his third volume says:

"His end will have been gained if he has succeeded in helping to train the judgment of his readers to discern the balance of truth and reality"; and "to rest content with nothing less than the attainable maximum of truth."<sup>21</sup>

Those three volumes have been carefully read by the writer of this. Others who shall have given a like reading may understand, better than they could otherwise, how well Professor Stubbs has "told the origin and development of the Constitutional History of England"—how well he has traced the continuity of national life through an age of obscurity and disturbance to the time at which "new struggles of constitutional life begin—the point at which modern and mediæval history seem to divide."<sup>22</sup> If it could reasonably be supposed that in a short time there will be *from that point*<sup>23</sup> to the acces-

<sup>17</sup> His second edition was published in 1872, and the new edition in 1878.

<sup>18</sup> "Select Charters and other illustrations of English Constitutional History from the earliest times to the reign of Edward the First, arranged and edited by William Stubbs, M. A., Regius Professor of Modern History," Oxford, 1870.

<sup>19</sup> "The Constitutional History of

England, in its origin and development, by William Stubbs, M. A., Regius Professor of Modern History," Oxford, vol. 1, 1874; vol. 2, 1875; vol. 3, 1878.

<sup>20</sup> *Id.*, vol. 3, pp. 617, 618.

<sup>21</sup> *Id.*, p. 620.

<sup>22</sup> *Id.*, p. 4.

<sup>23</sup> See in this volume at the end of ch. 29, p. 919.

sion of William and Mary so good a history as, with the help of Professor Stubbs, now exists *to that point*, it would be very agreeable to have such supposition realized.

Upon the volume in 1726 by Samuel Burroughs (mentioned *ante*, p. iii), and that in 1727 by Sir Philip Yorke,<sup>24</sup> observations by George Harris<sup>25</sup> and Edward Foss<sup>26</sup> had been seen by me before Nov. 13, 1879, when I became possessed of a volume ascribed to that learned prelate William Warburton,<sup>27</sup>—

“The Legal Judicature in Chancery stated, with remarks on a late book entitled ‘A discourse of the judicial authority belonging to the Master of the Rolls in the High Court of Chancery.’” Lond., 1727.

It came to me very opportunely,<sup>28</sup> and is frequently cited in the present volume.<sup>29</sup>

The table of contents at the beginning, and the index at the end of this volume, indicate the matters treated of in it; and the index (especially) facilitates their examination. As to the High Court of Chancery, previously to the time when, and soon after, there was a settled *court of equity* before the Chancellor’ (besides what is referred to p. 1185, under tit. *Romans*, p. 1188, under tit. *Saxons*, pp. 1105, 1106, under tit. *Danes*, pp. 1098, 1099, under tit. *Civil Law*, and pp. 1145, 1146, under tit. *Justinian*), a great deal of information has been obtained, and is referred to under tit. *Chancellor*, p. 1096; *Chancery*, pp. 1096, 1097; *Council of the Chancery*, p. 1103; *Equity*, pp. 1115, 1116; *Clerks*, p. 1099; *Master of the Rolls and other Masters in Chancery*, p. 1158; *Register* (or Registrar), p. 1180.

As to other Institutions of England there are references under tit. *Fundamental Principles*, p. 1124; *Magna Carta*, pp. 1154, 1155;

<sup>24</sup> “Discourse of the judicial authority belonging to the office of Master of the Rolls in the High court of chancery.”

<sup>25</sup> In *Life of Hardwicke*, edi. 1847, vol. 1, p. 195 *et seq.*

<sup>26</sup> His “Biographical dictionary of the Judges of England from the Conquest” has been constantly upon my ‘writing table. Much of his valuable material is, in the present volume, in *chronological*, besides being (through the Index) accessible in *alphabetical*, order. What is alluded to above in the text is under tit. *Jekyll* (Joseph) and *Yorke* (Philip).

<sup>27</sup> Published four years after 1723, when, it is said, he relinquished the law for the church. *Watkins’s Biogr. Dict.*, edi. 1822.

<sup>28</sup> Opposite the title page are the words: “Conway Robinson, Esq., with the cordial regards of Little, Brown & Co., Nov. 13th, 1879.”

<sup>29</sup> Its use in this volume was none the less, because of my being told by the gentleman who handed it to me that at a stall for second hand books he purchased it for a small part of a dollar.



*Constitutional Machinery*, pp. 1101, 1102; *Election*, p. 1114; *Representation*, p. 1181; *Parliament*, p. 1170 to 1172; *Appointments to Office*, p. 1075; *Public Officers*, p. 1178; *Benevolences*, p. 1084; *Centuries Reviewed*, pp. 1095, 1096.

For centuries it seems to have been thought in England sound policy to encourage the attainment of skill and exercise of good judgment in performing the duties of an office. It may be seen on p. 1131, that in 1351, 25 Edw. III, *Henricus de Haydok* was one of the twelve clerks in chancery of the *second* form; and in 27 *Id.*, he was advanced so as to be of the *first* form, and thus become one of the Council of the Chancery to assist the chancellor. *John de Langton*, who had been a clerk in the chancery, was probably senior clerk, when, in 14 Edw. I (1286), he became Master or keeper of the Rolls. He is the first person to whom this title can be distinctly traced; on Dec. 17, 1292, he was appointed successor of England's "*first great chancellor*," Robert Burnell.<sup>30</sup>

666 years have passed since John's *Magna Carta* (p. 237), with these words :

"We will not make any justiciars, constables, sheriffs or bailiffs, but of such as are *knowing in the law* of the realm, and are *disposed duly to observe it*."

It being incumbent upon an officer to perform the duty of his office according to law, one could not be fit to enter upon an office, or to remain in it, unless he was "disposed duly to observe" the law. To what extent he should be "knowing in the law" might somewhat vary with the nature of the office, but he was to observe the law to the best of his skill and judgment. Unless those having the appointing power believed he would observe it, they, in appointing him, were guilty of breach of duty and breach of trust; and it was an aggravation of their offence if its commission was induced by an improper motive. In 1288 was the statute of 12 Ric. II (p. 683).

"That the Chancellor, treasurer," &c., the justices of the one bench, and of the other, &c., and all other that shall be called to ordain, name, or make justices of peace, sheriffs, escheators, customs, comptrollers, or any other officer or minister of the king, shall be firmly *sworn that they shall not ordain, name, or make justice of the peace, sheriff, escheator, customer, comptroller, nor other officer or minister of the king, for any gift or brocage, favour or affection*; nor that *none which pursueth*, by him or other, privily or openly, *to be in any manner office, shall be put in the same office or in any other*;

<sup>30</sup>See *post*, ch. 16, § 17, p. 409; *Id.*, § 19, p. 417; and ch. 17, § 13, p. 474.

but that *they shall make all such officers and ministers of the best and most lawful men, and sufficient to their estimation and knowledge.*"

Thereof (in Co. Lit. 234 a) Ld. Coke says:

"A law worthy to be written in LETTERS OF GOLD, but more worthy to be put in due execution. For certainly never shall justice be duly administered but when the officers and ministers of justice be of such quality, and come to their places in such manner as by this law is required."

This law seems to have been appreciated by the Houses both of York and Lancaster.<sup>31</sup> It remains in England's statute book; and is in the "Statutes Revised," ed. 1870.<sup>32</sup>

Lord Coke, speaking of "the exaction under the good name of *benevolence*," begun in 12 Edw. IV, states that "many of the people did much grudge at it and called it a *malevolence*."<sup>33</sup> Of the acts of Richard the third one of the wisest was that of 1 Ric. III, ch. 2, "an act to free the subjects from *benevolences*." But he did not adhere to it. There is mention of letters sent by him exacting these benevolences, and specifying the sum which each person was *required to give*. It is stated that "this" was "a fatal blow at what remained of his popularity."<sup>34</sup>

Leaving to others, who may see occasion to do so, to examine Horace Walpole's position as to the character of Hen. VII, that it is "much worse and more hateful than Richard's,"<sup>35</sup> I have expended less time and labour upon the seventh than the eighth Henry. "Surrounding circumstances of great interest are referred to under tit. *Henry VIII*, pp. 1135, 1136; *Katharine* (of Arragon), p. 1146; *Wolsey* (Thomas), p. 1212; *Boleyn* (Anne), pp. 1086, 1087; *More* (Thomas), p. 1162; and under names of others of Henry's chancellor and queens.

To complete this work, vol. 2 is to embrace the 142 years from the death of Hen. VIII (in 1546-7) to the accession of William and

<sup>31</sup> *Post*, p. 777, is stat. 2 Hen. VI, ch. 10, "that all the officers made by the King's Letters patents royal within the said courts, which have power and authority by virtue of their offices of old time, accustomed to appoint clerks and ministers within the same court, shall be charged and sworn to appoint such clerks and ministers, for whom they will answer at their peril, which be sufficient,

*faithful, and attending to that which pertaineth to them in performance of the business, as well of the King as of his people."* 2 Stat. of the Realm, p. 212.

<sup>32</sup> Vol. 1, p. 236 to 239.

<sup>33</sup> *Post*, ch. 29, pp. 887, 888.

<sup>34</sup> *Post*, p. 859, p. 861 (and n), and pp. 887, 888.

<sup>35</sup> Walpole's *Historic Doubts*, edi. 1768, p. 132.

Mary in 1688-9. For that volume much investigation has been made; and of it the greater part is written. As to officers of the High Court of Chancery, in *Elizabeth's reign*, it appears as to *Lawrence Wasshington of Sulgrave*, in Northampton county, that *this second son—also named Lawrence*—was entered of Gray's Inn in 1571, called to the bar in 1582, had a country residence at Jordan's Hall, *Maidstone*, and was *Registrar of the Court of Chancery from March 25, 1593*, until the end of that reign; that he was in *King James's* first parliament (1603) a member for *Maidstone*, and assisted by deputies, continued personally to discharge the duties of the office of Registrar until his death, on Dec. 21, 1619, at his house in Chancery Lane; that he was then *succeeded in the office of Registrar by his son, Lawrence Washington*, who was, in 1627, knighted by King Charles the First, and *held the office of Registrar until 1643*, when he died at Oxford, and was buried at Garsden, his residence in Wiltshire. These matters, though coming within the period and scope of vol. 2, it is deemed advisable to mention now in advance of its completion and publication, since they conduce to supply an omission, and may elicit further information, as to a matter of considerable interest on both sides of the Atlantic.<sup>36</sup> It may turn out to be neither Lawrence Washington of Sulgrave, nor Lawrence Washington of Garsden, but Lawrence Washington of Maidstone, whose elder brother, Robert, was ancestor of GEORGE WASHINGTON, of whom there are memorials in America: in the Code of Virginia,<sup>37</sup> and in proceedings of the Congress of the United States.<sup>38</sup>

<sup>36</sup> Lawrence Washington, of Maidstone, is omitted in the Genealogical Table published by Jared Sparks in his 'Writings of Washington.' Edi. 1837, vol. 1, pp. 552, 553. This omission of a generation, though a source of confusion, has, it is believed, not hitherto been noticed by any writer in the United States.

<sup>37</sup> Edi. 1849, tit. 2, ch. 73, 74, 75, p. 353 to 356. The marble statue (by Houdon) of Washington, procured under a resolution of the General Assembly of Virginia, adopted in June, 1784, remains in the Capitol at Richmond, with the following on its pedestal:

"The General Assembly of the Commonwealth of Virginia have caused this

statue to be erected as a monument of affection and gratitude to GEORGE WASHINGTON, who uniting to the endowments of the hero the virtues of the patriot, and contributing both in establishing the liberties of his country, has rendered his name dear to his fellow-citizens, and given to the world an immortal example of true glory." *Id.*

<sup>38</sup> In Virginia, at Mount Vernon, in 1799, on Dec. 14, in the evening, Washington died. Of his death, intelligence was received at Philadelphia on the 18th, and the House of Representatives immediately adjourned. Next morning a member from Virginia, John Marshall—afterwards Chief Justice of the Supreme Court of the United States—made the speech, from which the follow-

Some of Sharon Turner's language as to Alfred the Great, may, perhaps, be as well applied to George Washington: he "was an exact economist of his time, without which indeed nothing *great*<sup>39</sup> can be achieved."

CONWAY ROBINSON.

THE VINEYARD, *near Washington city,* }  
*April 21st, 1882.*

ing is extracted:

"Having effected the great object for which he was placed at the head of our armies, we have seen him convert the sword into the ploughshare, and sink the soldier in the citizen."—"Having been twice unanimously chosen the chief magistrate of a free people, we have seen him at a time when his reëlection with universal suffrage could not be doubted afford to the world a rare instance of moderation, by withdrawing from his station to the peaceful walks of private life. However the public confidence may change, and the public affections fluctuate with respect to others, with respect to him, they have in war and in peace, in public and in private

life, been as steady as his own firm mind, and as constant as his own exalted virtues."

Resolutions which had been prepared by General Henry Lee were then offered by Mr. Marshall to the House and accepted—one of which was—

"That a committee, in conjunction with one from the Senate, be appointed to consider on the most suitable manner of paying honor to the memory of the man *first in war, first in peace, and first in the hearts of his fellow-citizens.*"—*Writings of Washington*, vol. I, p. 530, and pp. 563, 564.

<sup>39</sup> This denotes the misprint on p. 61.

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# INTRODUCTION.

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A PROPER understanding of the large and important subject embraced in a "History of the High Court of Chancery and other institutions of England" for more than seventeen hundred years, may, it is thought, be promoted by a few pages of introductive matter—as to the people from whom those institutions were derived; and concerning Christianity in its early years.

## *1. General view as to the Romans and the Northmen.*

"Two nations only have left permanent impressions of their laws, civil polity, social arrangements, spirit and character, on the civilized communities of modern times—the Romans, and the handful of northern people, from the countries beyond the Elbe, who had never submitted to the Roman yoke, who, issuing in small piratical bands, from the fifth to the tenth century, under the names of Saxons, Danes, Northmen, plundered, conquered, and settled on every European coast, from the White Sea to Sicily. Under whatever name, Goths, Visigoths, Franks, Anglo-Saxons, Danes, or Northmen, these tribes appear to have been all of one original stock—to have been one people in the spirit of their religion, laws, institutions, manners, and languages, only in different stages of civilization, and the same people whom Tacitus describes. But in Germany the laws and institutions derived from the Roman power, or formed under it after the Roman empire became christianized, had buried all the original principles of Teutonic arrangements of society as described by Tacitus; and in France the name was almost all that remained of Frank derivation. All the original and peculiar character, spirit and social institutions of the first inundation of this Germanic population had become diluted and merged under the church government of Rome,—when a second wave of populations from the same Pagan north inundated again, in the ninth and tenth centuries, the shores of Christendom. Where-soever this people from beyond the pale and influence of the old Roman empire, and of the later church empire of Rome, either set-

tled, mingled, or marauded, they have left permanent traces in society of their laws, institutions, character and spirit."<sup>1</sup>

2. *Of social and political changes coinciding with the development of Roman power. Of Christianity in its relation to government, during three centuries; in which there was, in point of jurisdiction, no distinction of ecclesiastical and spiritual from civil and temporal causes.*

*Fustel de Coulanges* speaks of 'a series of social and political changes' 'taking place in all the cities and in Rome itself, transforming at the same time the governments of men and their ways of thinking'; and remarks of this revolution 'that it coincides with the great development of the Roman power.'

"Men no longer loved their country for its religion and its gods; they loved it only for its laws, for its institutions, and for the rights and security which it afforded its members. We see in the funeral oration which Thucydides puts into the mouth of Pericles what the reasons are that Athens was loved; they are because this city 'wishes all to be equal before the law;' 'because she gives men liberty and opens the ways of honour to all; because she maintains public order, assures authority to the magistrates, protects the weak.' If man 'still gives his blood and his life, it is to defend the institutions which he enjoys and the advantages which the city procures him.' 'One loved his country only as much as he loved the form of government that prevailed there for the moment; and he who found its laws bad had no longer anything to attach him to it.' 'Men then began to emigrate more freely;' they 'were easily accustomed to live away from their country.'<sup>2</sup> 'They wished to escape from a *regime* which, after having produced real grandeur, no longer produced anything but suffering and hatred.'<sup>3</sup>

Of Christianity, and the 'great consequences' that 'flowed as well for the relations between nations as for the government of states,'<sup>4</sup> Mons. de Coulanges speaks thus:

"During three centuries, the new religion lived entirely beyond the action of the state; it knew how to dispense with state protection, and even to struggle against it. These three centuries established an abyss between the domain of the government and the domain of

<sup>1</sup> Laing's *Chronicles of Kings of Norway*; cited in *Penny Magazine* for 1844, Aug. 17, No. 794, p. 320.

<sup>2</sup> *Ancient City*, book 5, ch. 2, pp. 491, 492 of Am. ed. 1874.

<sup>3</sup> *Id.* pp. 493, 494.

<sup>4</sup> *Id.* book 5, ch. 3, p. 524.

religion.”<sup>5</sup> “Christianity distinguished the private from the public virtues. By giving less honour to the latter, it elevated the former; it placed God, the family, the human individual above country, the neighbor above the city. Law was also changed in its nature.”<sup>6</sup> Christianity “occupied itself with the duties of men, not with their interests. Men saw it regulate neither the laws of property, nor the order of succession, nor obligations, nor legal proceedings. It placed itself outside the law and outside all things purely terrestrial. Law was independent; it could draw its rules from nature, from the human conscience, from the powerful idea of the just that is in men’s minds.”<sup>7</sup>

These observations bear upon *the distinction of ecclesiastical and spiritual from civil and temporal causes.*

“For the space of three hundred years after Christ, this distinction was not known or heard of in the christian world. For the causes of testaments, of matrimony, of bastardy and adultery, and the rest which are called ecclesiastical or spiritual causes, were merely civil, and determined by the rules of the civil law, and subject only to the jurisdiction of the civil magistrate.”<sup>8</sup>

With this statement of Sir John Davies is the observation that “after that the emperors had received the Christian faith” they singled out “special causes wherein they granted jurisdiction unto the bishops;” and therein the bishops did proceed “according to the rules of the imperial law, as the civil magistrate did proceed in other causes.”<sup>9</sup>

### 3. *The administration established by the Romans in a country of which they made a province.*

The Romans “made it their business to establish a norm of administration in any country of which they determined to make a province. A country was not thought to be really conquered till it had been bound down by Roman laws as well as overthrown by Roman arms.”<sup>10</sup> “The norm of administration thus established was called, in general terms, the ‘law of the province’ (*lex provinciæ*).”<sup>11</sup>

<sup>5</sup>Ancient City, p. 526. <sup>6</sup>Id. p. 527.

<sup>7</sup>Id. pp. 527, 528.

<sup>8</sup>Davies’ Rep. p. 273 of edi. 1762.

<sup>9</sup>Id. pp. 273, 274.

<sup>10</sup>P. 23 of Arnold’s Rom. Prov. Adm.; being the Arnold Prize Essay for 1879.

<sup>11</sup>“But as applied to any particular province it would be named after its original author. Thus we find the *Lex Pompeia* in Pontus and Bythinia, the

*Lex Mumia* in Achaia, the *Lex Rupilia* in Sicily.” Id. p. 24. “The *Lex Rupilia* seems to have chiefly concerned itself with the administration of justice, and laid down minute regulations as to the courts in which actions between Sicilians and Romans, between Sicilians of the same town and between a Sicilian of one town and a Sicilian of another, were to be tried.” Id. p. 25.

"Every-where where the Roman conquest had found a good municipal and financial organization it had remained content with it."<sup>12</sup> "The Romans were not cursed with the passion for uniformity."—"The extent to which they left the pre-existing arrangements unaltered in Egypt is an extraordinary proof of their wise conservatism:"—"The arrangements of the Ptolemies remained the ground-work of the government."—"The general difference in the administration of East and West illustrates the same marvellous readiness of Rome to adapt herself to existing circumstances. The incompatibility of Roman and Greek was a fact she early recognized:"—"The policy of Rome was to leave the Greek cities very much to themselves, though no doubt always favouring the aristocratic element in them as Sparta had done before her, at the expense of the democratic element."—"On the whole, "towns remained wonderfully unchanged."—"This conservatism was of course very natural. The Romans would have given themselves an immensity of trouble, if they had insisted upon a uniform administration every-where."<sup>13</sup>

"In all cases the prætor presided, except where he delegated his authority to his subordinates; but he was assisted, and no doubt to a certain extent controlled by his assessors—always apparently Romans settled in the province,—whom he appointed to try the case along with him."<sup>14</sup>

"The number of cases that came before the prætor as compared with those that came before the local courts would depend upon the arrangements of the *lex provincie*; upon the amount of liberty claimed by the towns; and last, but not least, upon the inclination of the governor to respect those liberties. So the people of the little town of Bidis in Sicily had apparently a right to settle legacy cases by their own municipal law, but Verres ignored the right. Another right granted to the Sicilians was that no man should be forced to give security to appear in any court (forum) but that of his own district. It would of course have been ruin to a poor man to have to leave his business, and make a journey and appear in a court held at the other end of the island. This right too Verres disregarded. In those provinces in which there were numbers of Roman colonies and municipia, the jurisdiction of the governors and of the towns existed

<sup>12</sup>Egger *Examen critique*, p. 44, is cited on p. 19 of Arnold's *Rom. Prov. Adm.*; being the Arnold Prize Essay for 1879.

<sup>13</sup>*Id.* p. 19 to 22.

<sup>14</sup>*Id.* pp. 53, 54.



side by side, each" (Mr. Arnold says) "keeping no doubt within its accurately defined limits."<sup>15</sup>

"The governor of a Roman province united in his single person civil and military authority. He was commander-in-chief and supreme judge, and (though this was the special business of the quæstor) largely interfered in matters of finance."—"The first business of a Roman governor was to publish his edict;"—"and it was the custom for it to be made known in the province before the governor entered upon his office."—"The edict was only controlled by the *lex provinciæ* and the local codes."—"In theory, each new governor might issue a completely new edict; but in practice it was not so."—"Great part of the edict was traditional, and passed on from prætor to prætor without change; '*edictum tralatitium*' Cicero calls it, and in this way a regular code of law was built up in the provinces."—"These provincial edicts were, as regarded many points of civil law, largely modelled upon the edicts of the urban prætors."<sup>16</sup>

"It was in his capacity as supreme judge that the proconsul must have impressed himself most strongly upon the minds of the provincials. Under the empire the provinces were regularly divided into *conventus*, or districts for judicial purposes, corresponding to our 'circuits'," and 'from the first a certain number of towns were set apart as convenient centres, where the prætor was accustomed to make a stay and hold a court.' To these centres the Roman citizens dwelling in the neighborhood resorted at fixed intervals, so as to form a ready-made body of jurymen, from whom the prætor might appoint fit persons to try the several cases brought before him. It was one of the complaints brought by Cicero against Verres, that he repeatedly passed over these capable and respectable persons and appointed judges from his own good-for-nothing retinue."<sup>17</sup>

4. *Of the distinction in the Roman law between actions stricti juris and bonæ fidei; the period at which the Romans had distinct courts of law and equity. Of their doctrine of trusts; and their Prætor fidei commissarius.*

The distinction between such actions is noticed by Mr. Spence.<sup>18</sup>

<sup>15</sup> Id. p. 54.

<sup>16</sup> Id. pp. 48, 49.

<sup>18</sup> 1 Spence's Eq. 210, *et seq.* 218, 246,

<sup>17</sup> Id. p. 52.

323.

"The law, on principles of equity, had established as a maxim that the seller of an estate should make compensation for all the encumbrances that he knew of and which he might omit to communicate at the time of the contract. One Gratidianus had sold a house to C. Sergius Orata, which the latter had shortly before purchased of the same Gratidianus. Sergius Orata was entitled to a right of way or some other *servitus*, or as we may say easement, over this property, which Gratidianus naturally did not mention at the time of sale. Orata taking advantage of this omission, insisted that he was entitled, according to the settled rule of law, to compensation for the easement; and he commenced an action to recover it. This being an *actio bonæ fidei*, an equitable defence was admissible. Crassus was the advocate of Orata, Anthony of Gratidianus; the remainder is best told in Cicero's own words:<sup>19</sup> '*Jus Crassus urgebat—quod vitii venditor non dixisset sciens id oportere præstari.*'<sup>20</sup> *Æquitatem* Antonius, quoniam id vitium ignotum Sergio non fuisset, qui illas ædes vendidisset, nihil fuisse necesse dici; nec eum esse deceptum qui id quod emerat quo jure esset teneret.'<sup>21</sup> '*Quorsum hæc?*' adds Cicero, '*Ut illud intelligas non placuisse majoribus nostris astutos.*'<sup>22</sup>

So, in the oration for Cæcina, '*Si verbis et litteris, et (ut dici solet) summo jure contenditur; solent ejus-modi iniquitati, Boni et Æqui nomen dignitatemque opponere.*'"

Cicero's oration for Cæcina<sup>23</sup> is supposed to have been delivered when Cicero's age did not exceed thirty-eight, that is in a year not later than 69 before Christ.<sup>24</sup> Professor Browne says:

"Certain it is," "from express passages in the code, that before the time of Justinian,<sup>25</sup> there were fixed and permanent tribunals; certain it is also that they had distinct courts of law and equity. The doctrine of trusts contributed to this distinction with them as much as with us. On the doctrine of trusts, their law was fertile and prolix, and their *Prætor fidei commissarius*, easily suggested to churchmen and civilians the idea of our modern chancellor."<sup>26</sup>

<sup>19</sup> De Officiis, lib. iii, c. 16, tom. iii. 394. Mr. Spence (1 Spence's Eq. 412,) notes that 'this was rather a favorite illustration;' that "it occurs again in the Treatise, *De Oratore*, lib. i, ch. 39."

<sup>20</sup> V. Dig. xix i, 11.

<sup>21</sup> Mr. Spence (1 Spence's Eq. 412) observes that "this afterwards became the law;" and cites Dig. xix i, 1.

<sup>22</sup> De Officiis, lib. iii, c. 16.

<sup>23</sup> Synopsis in Olivet's edition, tom. iv p. 659–661, referred to in 1 Spence's Eq. pp. 221, 222.

<sup>24</sup> Middleton's Cicero, p. 129 of Lond. edi. 1801; 1 Forsyth's Cicero, p. 69 of N. Y. edi. 1866.

<sup>25</sup> That is before 527.

<sup>26</sup> 1 Browne's Civil Law, ch. 2, p. 40 of Lond. edi. 1802.

5. *The Roman cancellarii. Name and office of chancellor copied from Rome into France and other states of Europe.*

"The Roman cancellarii became secretaries or scribes to the emperors and principal judges; then they seem to have been a sort of provincial prætors; and one of them, being distinguished above the rest, suddenly reached the summit of civil grandeur and preëminence. The ordinary part of his function in the latter ages, seems to have been to receive petitions and supplications addressed to the throne and to frame and issue the imperial writs and mandates."<sup>27</sup>

The name and office of chancellor was copied from the Cæsarian palace into most of the states of Europe.<sup>28</sup>

Monsieur Domat speaks "of the first of all the magistrates who is the Chancellor of France, the Head of Justice, who presides in the King's council, and in all the sovereign courts of justice where he sits, who gives the form and puts the seal to all edicts, declarations and ordinances, who gives patents and commissions to all officers, and who exercises all the other known functions of this first and most important of all the offices."<sup>29</sup>

<sup>27</sup> 1 Wooddesson Inst., p. 160 of 1st, p. 96 of 2d edi.

cited in 1 Story's Eq. § 40, note 5, p. 51 of 12th edi. (1877).

<sup>28</sup> Id; Camden's Britannia, p. 180, is

<sup>29</sup> Domat's Civil Law, vol. 2, p. 570 of Lond. edi. 1722.



# TITLE I.

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## INSTITUTIONS OF BRITAIN FROM ITS INVASION BY THE ROMANS UNTIL THE NORMAN CONQUEST.

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“The realm of England was first inhabited by the Britons; afterwards it was ruled and civilized under the government of the Romans; then the Britons prevailed again; next it was possessed by the Saxons, who changed the name of Britain into England. After the Saxons, the Danes lorded it over us, and then the Saxons prevailed a second time; at last, the Normans came in, whose descendants retain the kingdom.”

The period thus spoken of by Sir John Fortescue<sup>1</sup> is treated of under this title.

CHAP. I.—Institutions of Britain until its invasion by the English (449).

II.—Institutions of Britain from its invasion by the English (449) until King Egbert's death (838).

III.—Institutions of England from King Egbert's death (838) until the death of Alfred the Great (901).

IV.—Institutions of England from the death of Alfred the Great (901) until the Norman Conquest (1066).

V.—Views applicable to the period from 449 to 1066. Polity of the Germanic race; developed on British soil. Process of migration to, and conquest of, Britain by the English: their institutions before the Norman Conquest. The fine arts among the Anglo-Saxons.

<sup>1</sup> De Laudibus Legum Angliæ, ch. 17, p. 50 to 52 of Cincinnati edi. 1874.

## CHAPTER I.

INSTITUTIONS OF BRITAIN UNTIL ITS INVASION BY  
THE ENGLISH (449).*1. Of the Britons before and in Julius Cæsar's time.*

"The far greater part of the names of mountains, lakes and rivers, in both the British islands, are to this day descriptive and significant only in some Celtic language."

Together with this, statement is the expression of belief "that the people of Celtic race were the earliest inhabitants of these islands."<sup>1</sup> Other volumes contain interesting information of the ancient Britons. It has been said "that the etymon of many British words seems to be Greekish;" "that the Phœnicians or Greeks first sailed into Britain and mingled customs and languages."<sup>2</sup> But "the Romans were the first certain and known foreigners in this island;" and "*C. J. Cæsar* was the first of the Romans that invaded Britain."<sup>3</sup>

It is thought to have been almost demonstrated<sup>4</sup> that it must have been on the 26th of August B. C. 55 (at ten o'clock in the morning) that Cæsar reached the British coast, near Dover. This not being a good point to effect a landing in face of an enemy, Cæsar sailed along the coast; though the opposition of the natives was bold, and he encountered great difficulties, yet he succeeded in landing his two legions on an open flat shore between Walmer castle and Sandwich.

<sup>1</sup> Mackintosh's Hist. of Eng., ch. 1, p. 21 of Phila. edi. 1830.

<sup>2</sup> Pinnock's Guide to Knowledge, vol. 1, p. 421, *et seq.*, especially on pp. 429 and 430; Harl. Miscel., vol. 6, p. 217 of edi. 1810.

<sup>3</sup> Id. vol. 11, p. 449.

<sup>4</sup> By Edmund Halley, the astronomer and mathematician. He lived from 1656 to 1741, and was the author of a multitude of papers on 'Philosophical Transactions'; one of which is referred to in Penny Magazine for 1837, pp. 101, 102.

It was not long after this first invasion by Cæsar before the Britons a second time sued for peace.

Cæsar "*because the equinox was approaching* and his ships were leaky, granted it to them on no harder condition than that of doubling the number of hostages they had promised after their first defeat. He did not even wait for the hostages, but a fair wind springing up, he set sail at midnight and arrived safely in Gaul. Eventually only two of the British states sent their hostages; and this breach of treaty gave the Roman commander a ground of complaint by which to justify his second invasion."<sup>5</sup>

Thus it appears that on the shores of what is now Great Britain, Cæsar landed "in the fifty-fifth year before the Christian era"; he invaded the country in the following year.<sup>6</sup>

"Some victories he achieved, some hostages he took;" he "imposed a tribute upon the nation and so returned into the continent; he made no conquest" of the Britons "but discovered them to posterity."<sup>7</sup>

2. *Whether any skilled in the laws of Rome were employed by Julius Cæsar in what is now Great Britain. Particularly of Trebatius; what appears of him in Cicero's letters.*

In a volume published more than two centuries ago<sup>8</sup> is this passage:

"We read that Trebatius (an ancient civil lawyer, and who is often spoken of in the Pandects, who lived in Julius Cæsar's time,) was there 40 years before Christ; did remain at Samarobriua in this island of Great Britain; and died here likewise."<sup>9</sup>

It is interesting to enquire whether there is any, and if any what, foundation for the supposition that Trebatius (a civil lawyer) who

<sup>5</sup> Id.

<sup>6</sup> I Mackintosh's Hist. of Eng., ch. 1, p. 21 of Phila. edi. 1830, Louis Napoleon's Julius Cæsar, book 4, ch. 4, vol. 2, pp. 451, 452 of N. Y. edi. 1866; Id. ch. 5, pp. 467, 468.

<sup>7</sup> Harl. Miscel., vol. 11, p. 449, edi. 1810; Id. p. 102.

<sup>8</sup> "The Practice of the High Court of

Chancery, with the nature of the several offices belonging to that court; and the reports of many cases wherein relief hath been there had and where denied."—London 1672. A new edition of this volume (known as 'Choyce Cases in Chancery,') was published at London in 1870.

<sup>9</sup> Choyce Cases in Chancery, p. 55 of edi. 1870.

lived in Julius Cæsar's time was in the country now known as Great Britain.

In the year *ab urbe condita* 699 and before Christ 55, when Cæsar was in Gaul, preparing for his first expedition into Britain, Cicero was writing to him and Balbus of Trebatius, as a man of great modesty and merit and eminently *skilled in the laws of his country*.<sup>10</sup> Dr. Middleton's translation of this part of the letter reads:

"I will be answerable for the man; not in my former style, which you justly rallied when I wrote to you about Milo, but in the true Roman phrase which men of sense use; that there is not an honest, worthier, modester man living: I must add what makes the principal part of his character, that he has a singular memory and *perfect knowledge of the civil law*."<sup>11</sup>

Cæsar thanks him for sending the lawyer, Trebatius, to him, and "says upon it jocosely that there was not a man before in his army who knew how to draw a recognizance."<sup>12</sup> Cicero's friendly interest in the lawyer is continually shown in letters to Trebatius<sup>13</sup> written in a pleasant vein. He says, in one, "I am glad for my sake as well as yours that you *did not attend Cæsar into Britain*: as it has not only saved *you* the fatigue of a very disagreeable expedition, but *me* likewise that of being the perpetual auditor of your wonderful exploits;"<sup>14</sup> and in another, "I comfort myself with considering that you are not altogether so *desperate* a soldier as you are a lawyer. It is a wonderful consolation indeed to your friends to be assured that your passions are not an overmatch for your prudence. Thus, as much as I know you love the water, you would not venture, I find, to *cross* it with Cæsar: and tho' nothing could keep you from the *combats* in Rome, you were much too wise, I perceive, to attend them in Britain."<sup>15</sup> Yet Trebatius was a favorite of Cæsar: the same letter from which this extract is made contains the subjoined passage.<sup>16</sup>

<sup>10</sup> Cicero's Letters, by Melmoth, vol. 1, p. 134 to 138 of London edi. 1772.

<sup>11</sup> Middleton's Life of Cicero, p. 107 of Lond. edi. 1801.

<sup>12</sup> Id. p. 104.

<sup>13</sup> Id. pp. 108, 109; Cicero's Letters, by Melmoth, vol. 1, p. 138 to 148 of

Lond. edi. 1772; Forsyth's Cicero, vol. 1, pp. 328, 329 and 333, 334, 353.

<sup>14</sup> Melmoth's Cicero, vol. 1, p. 146; Forsyth's Cicero, vol. 1, p. 334.

<sup>15</sup> Melmoth's Cicero, vol. 1, pp. 151, 152.

<sup>16</sup> "I perceive by your letter that my



Trebatius was now in the city which had at that time in Gaul the name of Samarobriua, and is now in France the city of Amiens.<sup>17</sup> In a letter to him next year (A. U. 700) from Cicero there is (in Melmoth's translation) the following:

"You inform me, indeed, that Cæsar does you the honor to advise with you. For my own part, however, I had rather hear that he *consulted* your interest, than your judgment. But seriously; if the former is really the case, or there is any probability of its proving so, let me intreat you to continue in your present situation and patiently submit to the inconveniences of a military life: as on my part, I shall support myself under your absence with the hopes of its turning to your advantage. But if all expectations of this kind are at an end, let us see you as soon as possible: and perhaps some method may be found here of improving your fortunes. If not, we shall at least have the satisfaction of enjoying each other's company; and one hour's conversation together is of more value to us, my friend, than the whole city of Samarobriua. Besides, if you return soon, the disappointment you have suffered may pass unremarked; whereas, a longer pursuit, to no purpose, would be so ridiculous a circumstance that I am terribly afraid it would scarce escape the drollery of those very arch fellows, Laberius and my companion Valerius. And what a burlesque character would a *British lawyer* furnish for the Roman stage!"<sup>18</sup>

Of the same letter, as in *Epistolæ ad Diversos*, vii, 11, Mr. N. P. Howard<sup>19</sup> gave,<sup>20</sup> in a communication of December 16, 1869, the subjoined translation,<sup>21</sup> and accompanied the same with the observations

friend Cæsar looks upon you as a most wonderful lawyer: and are you not happy in being thus placed in a country where you make so considerable a figure upon so small a stock? But with how much greater advantage would your noble talents have appeared, had you gone into Britain? Undoubtedly there would not have been so profound a sage in the law throughout all that extensive island." Id. p. 149.

<sup>17</sup> Cicero writes him, "I find by those who come from your part of the world that you are grown wonderfully *reserved*: for they tell me you answer no *queries*. However, it is on all hands a settled point (and you have reason certainly to congratulate yourself upon it) that you

are the most profound sage in the law throughout the whole city of Samarobriua." 1 Melmoth's Cicero. p. 156.

<sup>18</sup> Id. p. 222 to 224.

<sup>19</sup> Mentioned in 7 Rob Pract. p. 1098 *et seq.*

<sup>20</sup> In response to a letter from the author of the present work.

<sup>21</sup> "You write, indeed, that you are consulted by Cæsar; but I would rather that your *interests* were consulted by him. If that is done, or you think it will be done, endure that military service and persevere. For I will console myself for the want of you by the hope of your advantage. But if those engagements are unprofitable, come back to us. For there will either be something for you here, at

below.<sup>22</sup> Admitting that Trebatius is mentioned as in the number of Cæsar's particular favorites,<sup>23</sup> and is celebrated by Cicero, Horace<sup>24</sup> and Pope,<sup>25</sup> it does *not* appear that he was in Britain at the time of Cicero's letter speaking of *britannici jureconsulti*, or at any other time, either before or after.<sup>26</sup> On the contrary, in Melmoth's first volume, subsequent to the letter mentioning 'a British lawyer,' there is another (A. U. 700) wherein Cicero, reproaching Trebatius with not writing him, says:

"Is it not the *apprehension of the next summer's campaign* that has rendered your hand too unsteady to perform its 'office'? If so, you must e'en *play over again the same gallant stratagem you practised last year in relation to your British expedition, and frame some heroic excuse for your absence.*"<sup>27</sup>

And it appears that soon afterwards Trebatius *did* return to Rome. It so appears in the following letter from Cicero to Trebatius in the same year (A. U. 700):

some time or other; or if not, one single conversation of ours together, will be worth more, by Hercules, than all Amiens. Finally, if you return quickly, there will be no talk about you. If you are long absent to no purpose, I dread not only Laberius, but even our own comrade Valerius. For a marvellous character, that of a *british lawyer*, may be brought before the public."

<sup>22</sup> "Valerius, mentioned along with *Laberius* the writer of mimes, was probably the poet Valerius *Catullus*, whose propensity to satirize his friends was well known. Catullus was certainly a friend of Cicero, as appears by one of his little poems addressed to the great orator; and that he was also a friend of Trebatius may be deemed highly probable, as the same Trebatius was, long afterwards, an intimate friend of another poet, Horace, who makes him an interlocutor in one of his satires, the subject of which is a pretended consultation of Trebatius, by Horace, as to the law of libel, and the

chance of its being applied to himself by the irritated victims of his satirical attacks. Trebatius, in fact, seems to have been a literary man by taste, as well as a lawyer by profession, and always to have sought and cultivated the friendship of those who were distinguished in literature. Most of the commentators upon Cicero, however, think (very strangely, as it seems to me) that the Valerius here mentioned was not the poet Catullus, but Valerius, the *lawyer*, to whom Cicero addressed the 10th epistle of the first book *ad Diversos*."

<sup>23</sup> Suet. in vit. Jul. Cæsar.

<sup>24</sup> Hor. Sat. ii. 1.

<sup>25</sup> Pope's Works, vol. 6, p. 96 *et seq.* of Lond. ed. 1824.

<sup>26</sup> Examination has been made of letters from Cicero to Trebatius, A. U. 700, in 1 Melmoth's Cicero, p. 232 to 234, pp. 235, 236, p. 239 to 241, pp. 247, 248, pp. 261, 262, pp. 266, 267.

<sup>27</sup> 1 Melmoth's Cicero, p. 247 of ed. 1772.

"*You laughed at me yesterday when I asserted over our wine that it was a question among the lawyers whether an action of theft could be brought by an heir, for goods stolen before he came into possession. Tho' it was late when I returned home, and I had drunk pretty freely, I turned to the place where this question is discussed, and have sent you an extract of the passage; in order to convince you that a point which you imagined had never been maintained by any man, was actually holden by Sextus Ælius, Marcus Manlius and Marcus Brutus. But notwithstanding these great names, I agree in opinion with Scævola and Trebatius.*"<sup>28</sup>

Of a letter,<sup>29</sup> alluded to by Mr. Forsyth,<sup>30</sup> as mentioning "the *common law*, which was for the common good," there was furnished to the author by Mr. Howard, the subjoined translation,<sup>31</sup> with these observations :

"*Jus* means right as well as law: and *jus civile*, though it very frequently means the system of civil law, may also, and with equal propriety, signify the right of the citizens. In this last sense I think it clear that Cicero has here used it, but with an allusion at the same time to the other and more common signification—playing, in fact, upon the ambiguity of the words. But *jus civile* can never mean the *common law*, in the sense familiar to English lawyers and jurists, nor indeed in any sense except in that in which the general law of every country, by which the common rights and remedies of the citizens are ascertained and regulated, may be termed the common law of that country. In any other sense, the *common law* is clearly a mis-translation of *jus civile*."

3. *Whether St. Peter or St. Paul was in the British Isle. As to this, Bishop Newton's view is supported neither by Dr. Lingard nor by Henry Hart Milman, dean of St. Paul's. Christianity without influence in the British Isle previously to Roman dominion therein.*

Towards Roman conquest of what is now Great Britain, there was

<sup>28</sup> Id. pp. 266, 267. For the rule of the common law of England as to the right of action for such goods there may be reference to 3 Rob. Pract. ch. 51, § 2, pp. 244, 245, and ch. 54, § 2, pp. 257, 258, of edi. 1858.

<sup>29</sup> Cicero Trebatio (Epistolæ ad Diversos, vii, 12) "*Indicavit mihi Pansa meus, epicureum te esse factum.—Sed quonam modo jus civile defendes, quum omnia tua causa facias, non civium?—Quod jus*

*statues communi dividundo, quum commune nihil possit esse apud eos, qui omnia voluptate sua metiuntur?*"

<sup>30</sup> Forsyth's Cicero, vol. 2, p. 7, of N. Y. edi. 1866.

<sup>31</sup> "My friend Pansa has informed me that you have become an epicurean.—But in what manner will you defend the *right of the citizens*, when you do everything for your own sake, and not for that of the citizens?—What law will you

done not much in Julius Cæsar's time;<sup>32</sup> and but little more for about ninety-seven years. These facts may not have received sufficient consideration from Dr. Thomas Newton when, in 1771, he published the following as to the British island:

"There is some probability that the Gospel was preached here by St. Simon the apostle; there is much greater probability that it was preached here by St. Paul."<sup>33</sup>

As to when Christianity was first preached in the British isle, Dr. Lingard says:

"Some writers have ascribed that province to St. Peter, others have preferred the rival claim of St. Paul; but both opinions (improbable as they are in themselves) rest on the most slender evidence—on testimonies which are, many of them, irrelevant, all ambiguous and unsatisfactory."<sup>34</sup>

In the opinion of Henry Hart Milman, dean of St. Paul's,

"The visit of St. Paul to Britain is a fiction of religious national vanity. It has few or no advocates except English ecclesiastical antiquarians. In fact, the state of the island, in which the precarious sovereignty of Rome was still firmly contested by the native barbarians, seems to be entirely forgotten."<sup>35</sup>

According to the weight of authority, Christianity had no influence in the British isle previously to Roman dominion in it; civilization had made little progress therein till the conquest of Agricola.<sup>36</sup>

assign for making partition of property held in common, when there can be nothing in common among those who measure all things by their own gratification?"

<sup>32</sup> *Joannes Seldeni ad Fletam Dissertatio*; published in 1647; also ch. 4, § 4, p. 69 of Kelham's translation in 1771; 2 Harl. Miscel. p. 411 to 476 of edi. 1809; Forester's note on p. 17 of Henry of Huntington, edi. 1853.

<sup>33</sup> *Dissertations on the Prophecies*, vol. 2, p. 258 of edi. 1771; citing Stillingfleet's *Origines Britannicæ*, ch. 1; Col-

lier's *Eccles. Hist.* book 1; *Usserii Britann. Eccles. Antiquitates*, cap. 1, &c.

<sup>34</sup> 1 Lingard's *Eng. ch.* 1, p. 44 of Boston edi. 1853.

<sup>35</sup> *Hist. of Christianity*, book 2, ch. 3, p. 470 (note) of vol. 1 N. Y. edi.

<sup>36</sup> "Up to that time, it was occupied only by the invading legionaries (fully occupied in extending and guarding their conquests) and by our wild ancestors with their stern Druidical authority." *Ibid.*

4. *The earliest period from which Roman dominion in Britain is claimed is in the reign of Claudius, A. D. 44. In the time of his successor, an heroic effort was made by Boadicea, a British queen, but the Britons were defeated by the Romans under Suetonius Paulinus.*

"If an inscription of Britain is correctly read, it seems to mention Cogidubni Regis (also known from Tac. Agr. 14,) *legati Augusti in Britannia*; and Hübner supposes this client-prince to have actually discharged the functions of imperial legate in this country."<sup>37</sup>

Claudius was proclaimed emperor in 41 A. D.

"It was not till the third year of the reign of Claudius that that emperor determined to invade Britain for the purpose of annexing it to the empire. Aulus Plautius accordingly was sent to Britain for this purpose, with such legions as could be spared from the service in Gaul, and he succeeded in subjugating a considerable portion of the country. He reduced it to the form of a province; and having placed several of his veteran officers as governors of different districts, concluded he had effected the object for which he had been sent."<sup>38</sup>

This invasion under the Emperor Claudius (U. C. 796, A. D. 44) is the earliest period from which Roman dominion in Britain is claimed.<sup>39</sup>

"Many of the natives having rebelled against the Roman authority, Publius Ostorius Scapula was sent in the year 49 to repress the insurrectionary movements of the Britons. In this he partially succeeded; and in order to preserve the tranquillity to which the country had been reduced, as well as to suppress any further manifestation of ill will, he proceeded to erect several forts in different parts of the country."<sup>40</sup>

<sup>37</sup>C. I. L. xvii. p. 18, and Hübner's note are cited on p. 14 of Arnold's Rom. Prov. Adm.; being the Arnold prize essay for 1879.

<sup>38</sup>Penny Magazine for 1839, Dec. 7. (No. 493) p. 474. Mr. Arnold, in speaking of the provinces added to the Roman empire in the reign of Claudius, mentions Southern Britain as "conquered and made into an imperial province under a legate." P. 133 of Arnold's Rom. Prov. Adm.; being the Arnold prize essay for 1879.

<sup>39</sup>Bede's Eccl. Hist., book I, ch. 3, pp. 10, 11; Henry of Huntington, p. 17; 2 Harl. Miscel., p. 430 to 446 of Lond. edi. 1809; Turner's Anglo-Saxons, book I, ch. 6, pp. 70, 71 of edi. 1852.

<sup>40</sup>This is the first authentic account of there being any Roman masonry in the kingdom. Penny Magazine for 1839, Dec. 7 (No. 493) p. 474. At Dover is a building, considered "the most ancient specimen of the architecture of the Romans now existing in Great Britain."—"Standing on the most elevated

War between the Romans and Britons continued until 62 A. D., and indeed until 78 A. D.<sup>41</sup>

Claudius died in A. D. 54, and was succeeded by Nero. After the death of Veranius, governor in Britain, this province was "assigned to Suetonius Paulinus, one of the most famous men of that age for military affairs."<sup>42</sup>

"Prasutagus, King of the Icenians, a man renowned for his riches, did, by his last will, make the Roman Emperor his heir (jointly with two of his daughters) supposing that thereby his kingdom and family should have been maintained in good estate and protected from violence after his death; all which fell out contrary to his hopes; for his kingdom was made a prey to the soldiers, Voadica (or Boadicea) his wife whipped, his daughters deflowered, such as were of his family made slaves, and the wealthiest men of his kingdom, either by open force or surmised pretences, deprived of their goods and dispossessed of their inheritance."<sup>43</sup>

There is an interesting picture of Queen Boadicea "animating the Britons to defend their country against the Romans."<sup>44</sup> To her, "standing upon a heap of turves," with "her daughters on each side of her," is ascribed a speech of considerable length; the conclusion of which is to this effect:

"Your ancestors could make head against Julius Cæsar, and the Emperors Caligula and Claudius; the Germans have lately freed themselves by that memorable overthrow of the Roman legions, under the conduct of Quintilius Varius; and shall not we who scorn to be reputed inferior to the Germans in valour, be confident in our own strength and boldly adventure? Considering that, if we prevail, we recover our lost liberty; if we be forced to retire, we have woods, hills and marshes, for our refuge; and if we die, we do but sell our lives with honour, which we cannot possess with safety. For my own part, you shall find me no less ready to execute, when time serves, than I am now to advise and exhort you; myself having determined either to vanquish or die; if any of you be otherwise minded, then live and be slaves still."<sup>45</sup>

portion of the hill on which the castle of Dover is situated, it forms a conspicuous object, visible for miles around, and for the last 1800 years has served as a landmark to guide the mariner to the shores of England." *Id.* p. 473.

<sup>41</sup> 1 Lingard's *Engl.*, ch. 1, p. 24 to 28 of Boston edi. 1853.

<sup>42</sup> 2 Harl. Miscel. p. 438 of edi. 1809.

<sup>43</sup> *Id.* p. 440.

<sup>44</sup> Pinnock's *Guide to Knowledge*, vol. 3, p. 1.

<sup>45</sup> 2 Harl. Miscel. pp. 442, 443 of edi. 1809.

The loss to the Romans, compared to that of their enemy, was inconsiderable. Boadicea herself narrowly escaped falling into the hands of the conquerors. "This heroic queen, in despair at her misfortunes, and unable to survive this terrible defeat, put an end to her existence by poison."<sup>46</sup>

5. *Of Britain when a province of Rome, and under the lex provinciae. What is beautifully said by Rutilius.*

As to the "State of the isle of Britain under the Roman empire,"<sup>47</sup> history shows how Agricola was proceeding when news came that Vespasian was dead and Titus, his son, invested in the empire (A. D. 79). When Agricola surrendered the command to his son, Lucullus, and returned to Rome, Roman power was firmly established in the island.<sup>48</sup> Britain, so far as it became a province of Rome, was under the *lex provinciae*,<sup>49</sup> and before very long British nobles were educated at Rome to inure them to Roman laws.<sup>50</sup>

By the time of Trajan, Eburacum (York) seems to have been the seat of government.<sup>51</sup> After Hadrian "had returned from the east to Rome, on the death of Trajan, his first journey was to Gaul and Germany." "Then he crossed to Britain and built the wall known by

<sup>46</sup> Pinnock's Guide to Knowledge, vol. 3, pp. 2, 3.

<sup>47</sup> The history so entitled was published in 1602 and reprinted in Harl. Miscel. p. 411 to 476 of vol. 2, edi. 1809.

<sup>48</sup> Lingard's Engl., ch. 1, p. 31 of Boston edi. 1853; p. 133 of Arnold's Rom. Prov. Adm.; being the Arnold prize essay of 1879. Mr. Arnold there subjoins "a summary of the *epigraphic* evidence." "There may be great men even under bad emperors." Agricola in Britain carried the Roman arms north of the Cheviots and secured the whole country by a mixture of clemency and force." Id. p. 139.

<sup>49</sup> See Introduction, § 3, *ante* p. 3 *et seq.*; 2 Harl. Miscel. p. 459; Camden Britan. p. 572 is cited in Selden's Dissertation, ch. 4, § 3, p. 68 of translation mentioned in

§ 3 *ante* p. 16 in note. Agricola's successors were employed in protecting the public tranquillity, in settling the details of the provincial government and in assimilating the state of Britain to that of other countries incorporated in the empire. 1 Lingard's Engl., ch. 1, p. 31.

<sup>50</sup> 6 Harl. Miscel., p. 218, edi. 1810.

<sup>51</sup> Id. p. 450; Arnold's Rom. Prov. Adm. p. 133. Mr. Green says, "Under the empire political power had centred in the district between the Humber and the Roman wall; York was the capital of Roman Britain." Green's Short Hist., ch. 1, § 2, p. 52; Green's Hist. of Engl. Peop., ch. 1, p. 26. Mr. Arnold says, "The inscriptions in York neighborhood are of the middle or end of the second century." P. 133 of Arnold's Rom. Prov. Adm.

his name.”<sup>52</sup> The successor whom Hadrian had chosen, M. Antoninus Pius, imitated, and perhaps even exceeded, *his* solicitude for the provinces.” “With such diligence did he rule the subject peoples that he cared for all men and all things as his own. All the provinces flourished under him.”<sup>53</sup>

It is beautifully said by Rutilius,<sup>54</sup> that Rome filled the world with her legislative triumphs, and caused all to live under one common pact; that she blended discordant nations into one country; and by imparting to those she conquered a companionship in her rights and laws, made the earth one great united city.<sup>55</sup>

6. *Christianity was introduced into Britain after Antoninus Pius became the Roman Emperor, and while Lucius was a prince in South Britain. Of the church at Dover; and the tradition which ascribes its erection to Lucius.*

Though Antoninus Pius extended the Roman dominion in Britain, yet he (by raising a new wall<sup>56</sup>) put a stop, during the continuance of that dominion, to the desolating invasions of the Picts and Scots; it has been said, to his credit, that “he is almost the only monarch that has lived without spilling the blood of his countrymen or his enemies.” In his time, namely, about one hundred and fifty years after the birth of Christ—it may have been some years later—the Christian religion began to discover itself openly in this island by means of Lucius, who, by permission of the Roman Lieutenant, did govern as king, a great part of the province.<sup>57</sup> Venerable Bede says:

<sup>52</sup> Id. p. 143. “Hadrian’s wall” was “not far north of York.” Id. p. 133. Now the Britons conformed themselves to the Roman laws, both in martial and civil affairs, which were then principally directed by Licinius Priscus, who had been, not long before, employed in the expedition of Jewry, and was at that time proprætor of Britain.” 2 Harl. Miscel. p. 459.

<sup>53</sup> P. 145 of Arnold’s Rom. Prov. Adm.

<sup>54</sup> *Legiferis mundum complexa triumphis  
Fœdere communi vivere cuncta facit—  
Fecisti patriam diversis gentibus unam—  
Dum que offers victis proprii consortia juris  
Urbem fecisti quod prius orbis erat.*

<sup>55</sup> Turner’s Hist. of Anglo-Saxons, book 1, ch. 6, p. 74.

<sup>56</sup> “The wall of Antoninus Pius was where Agricola had reached, *i. e.* between Clyde and Forth. This was the limit of Rome; Ireland was not touched.” Arnold’s Rom. Prov. Adm., p. 133.

<sup>57</sup> Hist of Engl. printed in 1602 and reprinted in 2 Harl. Miscel. p. 460 of edi. 1809. He (it has been supposed) was third in descent from Caradock or Caractacus and reigned at Winchester. 8 Dugdale’s Engl. & Wales, p. 1548, tit. *Winchester*.



"In the year of our Lord's incarnation, 156, Marcus Antoninus Verus, the fourteenth from Augustus, was made emperor, together with his brother Aurelius Commodus. In their time, whilst Eleutherius, a holy man, presided over the Roman church, Lucius, king of the Britons, sent a letter to him entreating that by his command he might be made a Christian. He soon obtained the object of his request."<sup>58</sup>

As to the year, there is some variation of language in Bede's chronological summary.<sup>59</sup> In the edition of the learned and reverend Dr. Giles, there is among his notes one in the words below.<sup>60</sup> Lucius is said "to have founded an episcopal see, and have erected a cathedral church" in Winchester.<sup>61</sup> In a modern publication there is as to works at Dover on the Castle Hill, the following:

"Adjoining the lighthouse is a building, which for many ages was used as a church, and which appears to have been erected either by the Romans or with the materials of some other edifice constructed by them. There is a tradition which ascribes its erection to the piety of Lucius, a king of Britain, who is said to have been converted to christianity about the year 172. Though this may be doubted, it is certain that at a very early period it was used as a church,"<sup>62</sup>

7. *Of Æmilius Papinianus, born in Italy or in Syria, and spoken of as the greatest lawyer of his time. He sat in England at York. After the death there, in 211, of the Emperor Lucius Septimius Severus, his son, Caracalla, caused his brother, Geta, to be assassinated; and caused Papinian to be executed in 212.*

Æmilius Papinianus, born in 140, in Italy or in Syria, applied him-

<sup>58</sup> "And the Britons preserved the faith which they had received, uncorrupted and entire, in peace and tranquillity, until the time of the Emperor Diocletian." Eccl. Hist., ch. 4, pp. 11, 12 of edi. 1840.

<sup>59</sup> "A. D. 167. In the year from the incarnation of our Lord 167, Eleutherius, being made bishop at Rome, governed the church most gloriously fifteen years. Lucius, king of Britain, writing to him, requested to be made a Christian, and succeeded in obtaining his request." Id., ch. 24, p. 337.

<sup>60</sup> "This message to Eleutherius is, by the author of the Saxon chronicle, placed in the time of Bassianus, son of Severus,

in whose first year he says Eleutherius was made bishop of Rome, which year Florent. places 162; Mat. West 185; a manuscript of the Saxon chronicle of Archbishop Laud's cxlvii., supposed by Bishop Gibson to be transposed to clxvii.; the latter part of this chapter is exactly the same with the Saxon chronicle." Id. notes p. 349.

<sup>61</sup> Which was destroyed during the time of the Dioclesian persecution. 8 Dugdale's Engl. & Wales, p. 1548, tit. *Winchester*.

<sup>62</sup> Penny Magazine for 1839, Dec. 7, (No. 493) p. 473. It is stated that "the Romans occupied a church on this spot

self to the study of Grecian and Roman literature, philosophy and jurisprudence, and is spoken of as the greatest lawyer of his time. By his learning and integrity he obtained great credit and influence, and was honoured with the first offices of state. He wrote several works and educated several distinguished lawyers. The writer of a history of England, printed in 1602,<sup>63</sup> speaking of the Emperor Septimius Severus, and his expedition to Britain, says:

"His two sons, Bassianus (commonly called Caracalla) and Geta, he took with him, as doubting their agreement in his absence. To Geta, his younger son, he committed the government of the province here for civil causes, wherein Æmilius Paulus Papinianus, the famous lawyer, who, as chief minister of justice under him, had his tribunal seat at York, was appointed to assist and direct him."<sup>64</sup>

The emperor (Lucius Septimius Severus) died at York in 211, leaving the two sons just mentioned, of whom Antoninus Bassianus Caracalla was the eldest.<sup>65</sup> It is stated that Severus, on his death-bed recommended his two sons, Caracalla and Geta, to Papinian's care; that Papinian tried to preserve concord between them, but his remonstrances were so disagreeable to Caracalla that he removed him from his place; that Caracalla, after causing his brother to be assassinated, having asked Papinian to justify the deed, received for answer that it was easier to commit fratricide than to justify it, and that it would be a second murder to sully the memory of an innocent man; and that when the pretorian guards, probably at the instigation of the tyrant, demanded the head of Papinian, he gave him up to their fury, and caused him to be executed, in the year 212.<sup>66</sup>

8. *Of the decree as to the Roman franchise which was made in England at York, not earlier than 210, nor later than 215.*

More than two centuries have elapsed since John Selden wrote of

until they quitted the country in the year 446; but whether that was the same building as the one still remaining," is not clear. *Id.*

<sup>63</sup> Reprinted in Harl. Miscel. vol. 2, p. 411 to 476.

<sup>64</sup> *Id.* pp. 463, 464 *et seq.*

<sup>65</sup> He was born at Lyons, A. D. 188,

and at the age of 13 was appointed by his father his colleague in the government.

<sup>66</sup> *Id.* and "*Joannes Seldeni ad Fletam Dissertatio*:" ch. 4, § 3, p. 63 *et seq.* of translation in 1771. See also Encyclop. Am.

Papinian as "Præfectus Prætorio, both to Severus and Antoninus Caracalla, or Bassianus his successor"; and wrote of "the rescript directed to one Cæcilia, concerning mancipia," given at York. Selden views it as given by them, or one of them; his doubt may be said to be not as to about the period at which the decree was given, but as to the particular year; this he mentions under a *scilicet*, to-wit: "in the year of Christ 210."<sup>67</sup>

Recently, in writing of 'the Roman Franchise' and 'the decree which granted it to all freemen, without distinction,' Mons. Coulanges has assumed that "no one can tell the date of this decree, or the name of the prince who issued it."<sup>68</sup> He says:

"The honor is given, with some probability of truth, to Caracalla—that is to say, to a prince who never had very elevated views; and this is attributed to him as simply a fiscal measure.<sup>69</sup> We meet in history with few more important decrees than this. It abolishes the distinction which had existed since the Roman conquest between the dominant nation and the subject peoples; it even caused to disappear a much older distinction which religion and law had made between cities. Still the historians of that time took no note of it."—"If this decree did not strike contemporaries, and was not remarked by those who then wrote history, it was because the change of which it was the legal expression had been accomplished long before. The inequality between citizens and subjects had been lessened every generation, and had been gradually effaced. The decree might pass unperceived under the veil of a fiscal measure; it proclaimed and caused to pass into the domain of law what was already an accomplished fact. The title of citizen then began to fall into desuetude; or if it was still employed, it was to designate the condition of a free man as opposed to that of a slave. From that time all that made a part of the Roman empire, from Spain to the Euphrates, formed really

<sup>67</sup> The edition of Fleta published in 1647 contains after p. 452 *Joannes Seldeni ad Fletam Dissertatio*, (p. 453 to 533). The reference above in the text is to ch. 4, § 3 of that dissertation; pp. 65, 66 of Kelham's translation in 1771.

<sup>68</sup> Coulanges says, "All we know of it we glean from two vague passages of the juriconsults and a short notice in Dion Cassius. '*Antoninus Pius jus Romanæ civitatis omnibus subjectis donavit.*' Justinian, Novels 78, ch. 5. '*In orbe Ro-*

*mano qui sunt, ex constitutione imperatoris Antonini, cives Romani effecti sunt.*' Ulpian, in Digest 1, tit. 5, 17. It is known moreover from Spartianus, that Caracalla was called Antoninus in official acts." The Ancient City, book 5, ch. 2, p. 517.

<sup>69</sup> Dion Cassius says that "Caracalla gave all the inhabitants of the empire the Roman franchise in order to make general the impost of tithes on enfranchisements and successions." Ancient City, book 5, ch. 2, p. 517.

one people and a single state.”—“There was now but a single name, a single country, a single government, a single code of laws.”<sup>70</sup>

The comprehensive expression in the last sentence may require qualifications.<sup>71</sup> In other respects it may be proper to compare the view of Mons. Coulanges with views of others.<sup>72</sup> Mr. W. T. Arnold says:

“The edict by which Caracalla, in the year A. D. 215, bestowed the Roman franchise upon all provincials must not be regarded as a measure peculiarly honorable to its author. Dio (lxxvii, 9) distinctly informs us that Caracalla’s reasons were purely financial. Under the existing system the land tax was paid by the provincials, and the legacy-duty by the Roman citizens in Italy, who were exempt from the former impost. By giving the Roman franchise to all the provincials, Caracalla made them pay the *vicissima hereditatem* as well, and over and above, the tribute. Thus the provincials had to bear a double burden, while Italy, though it paid the legacy duty, was still left exempt from the heavier tax. Nor is it easy to say what definite privileges, except perhaps in securing the right of appeal, the provincials obtained by this concession.”<sup>73</sup>

9. *Of that eminent lawyer Ulpian, who, after being recalled from exile, was massacred in 228. As to Ulpian and Paulus, observations upon language of John Selden; of the English translator of Domat’s Civil Law; and of the author of Kent’s Commentaries. It does not appear that either Ulpian or Paulus ever sat in Britain. Opinions of Ulpian, Paulus and others had weight; but Papinian’s was of greater weight than any one.*

In 222 that profligate Roman emperor, Heliogabalus, who had exiled the eminent lawyer, Domitius Ulpianus, was killed by soldiers whom he had enrolled, and was succeeded by his more worthy cousin, Alexander Severus; one of whose first acts was to recall Ulpian (his tutor and friend) to Rome, and there place him at the head of the

<sup>70</sup> Id. pp. 517, 518.

<sup>71</sup> Such as are mentioned in the Introduction, § 3, *ante* p. 3 *et seq.*

<sup>72</sup> Mr. Patrick Macchombach (Colquhoun) says: “The constitution of Caracalla, by extending the full rights of citizenship to the whole Romanized world, revived and consolidated the declining empire by animating the con-

quered provinces and colonies with a pride in the mother country, and by uniting them by the strong bond of common right and interest, and thus for a while its dissolution was stayed.” Discourse of 23 Nov. 1857, in 1 Jurid. Soc. Papers, p. 56, *edi.* 1858.

<sup>73</sup> Arnold’s Rom. Prov. Adm., ch. 4, pp. 154, 155.

council of state. He was also made secretary of state, and ultimately prætorian prefect. His administration was virtuous and wise until the dangerous task of reforming the army was undertaken. John Selden thought it not improbable that Paulus and Ulpian formed in Britain a part of the Cæsarian assembly; and expressed the "opinion that during the prefecture of Papinian, who, it is evident, was here, Ulpian and Paul were of the assessorial tribunal."<sup>74</sup> This opinion of a man very learned, and generally very accurate, was entitled to notice,<sup>75</sup> and was more than followed by the English translator of Domat's Civil Law, when he affirmed not only that Papinian but that "Paulus and Ulpian sat in the seat of judgment here in England, and distributed justice to the inhabitants."<sup>76</sup> It seems to the author of the present volume that Selden's opinion and Dr. Strahan's affirmation are against the weight of evidence. In the seat of judgment in England, Ulpian could not have sat during his exile, and does not appear to have sat afterwards. Rome was the place of his official duty after his recall; and there he was in 228, when discontent of the soldiery broke out into a mutiny, and he (Ulpian), pursued by a body of them, was massacred in the presence of the emperor and his mother.<sup>77</sup> Of the three Roman lawyers named by Selden and Dr. Strahan, it does not appear that any but Papinian was ever in England.

But we may agree with Selden that "the power of the imperial law" continued in Britain "for three hundred and sixty years, or thereabouts; that is, from the reign of Claudius Cæsar," "down to the empire of Honorius Augustus, or to the time when Rome was taken by Alaric, the Goth."<sup>78</sup>

<sup>74</sup> Ch. 4, § 3, p. 66 of Kelham's translation in 1771 of '*Joannes Seldeni ad Fletam Dissertatio*.'

<sup>75</sup> 1 Kent's Com. 545.

<sup>76</sup> William Strahan, LL. D., advocate in Doctor's Commons, in preface to London edi. of Domat's Civil Law, published in 1722.

<sup>77</sup> Encyclo. Am. There are remaining of Ulpian twenty-nine titles or fragments

which are inserted in some of the editions of the civil law.—Id.

<sup>78</sup> Ch. 4, § 4, p. 69 of Kelham's translation of '*Joannes Seldeni ad Fletam Dissertatio*.' The period is stated by Selden in 1647 with more precision than by Maule J. in 1853 in *Matthew v. Osborne*, 13 Com. B. (4 J. Scott) 933, 76 Eng. C. L.

We are indebted to Selden for an account of the books containing the imperial law, used in Britain;<sup>79</sup> also for his view as to the true year of the publication of the Theodosian Code,<sup>80</sup> and how the imperial law was altered in that code; which ratified the writings of Papinian, Paulus, Gaius, Ulpian and others.<sup>81</sup> He says:

"When different opinions were produced, the majority of authors prevailed; or if the number was equal, the authority of that party had the preference which had the opinion of that excellent genius, Papinian, in their favour, which, although of greater weight than that of any single person, was yet overruled by the judgment of two."<sup>82</sup>

*10. Decline and Fall of Rome. Fundamental defects made it impossible for its rule to be permanent. After Rome was taken by the Goths, what was Britain's condition as to Christianity, and in other respects, until the island was invaded by the English.*

"When the general corruption of the ancient manners rendered each citizen desirous to proportion his style of living, his houses, his equipage, his table, and his apparel rather to the appearance and fortune of his neighbor than to his own means,—embarrassments, or the fear of them, drove the Roman youth to the invention and commission of the most detestable crimes. While they possessed property, they exercised a vicious and curious ingenuity in squandering it. Earth, air and sea were ransacked to supply their tables with dainties, which their palled and vitiated appetites hindered them from enjoying; every article of their apparel was the produce of some different foreign land; nothing was considered wholesome which was the production of their own land; and nothing was allowed to be elegant unless its price was ruinously enormous or shamefully disproportioned to its real use or intrinsic value. When, by such a course, they had utterly exhausted their means, the horror of returning, as a matter of necessity, to that simple, frugal and healthy fare, which their forefathers had accustomed themselves to (as a matter of choice) was far greater than the principle of honesty or detestation of criminality; and in order to obtain fresh means of idleness and luxury, they degraded themselves by the practice of the most scandalous, disgraceful and degrading vices. All love of country, of freedom and of fame

<sup>79</sup> His account of these books is in ch. 5, § 1, p. 72 to 76 of Kelham's translation of '*Joannes Seldeni ad Fletam Dissertatio*.'

<sup>80</sup> Id. § 2, p. 76 to 79. The edict as to the authority of that code is ascribed by Selden to the sixteenth consulship, or the year of Christ 438.

<sup>81</sup> Id. § 3, p. 79 to 82,

<sup>82</sup> Id. p. 81. Valentinian III. whose reign was from 425 to 455, is said to have ordered "that whenever the opinions of the judges were divided, Papinian's opinion should be followed." Encyclo. Am. Selden's view may be more accurate.

was lost in the general corruption; and the foundation was thus laid for the future ruin of that Rome upon which the world had gazed in wonder and in awe."<sup>83</sup>

Moreover, there were "fundamental defects which made it impossible for the rule of Rome to be permanent."

"When the barbarians were thundering at the frontiers, and the tax-gatherers demanding the means for an administration which ruled but did not protect, the provinces were all the more wretched by the contrast with the former brilliancy of their prosperity. Rome had undertaken an impossible task, that of ruling an immense empire without federation and without a representative system, where the only sources of power were the supreme central government and the army."<sup>84</sup>

Venerable Bede states that, "A. D. 430, Palladius was sent to be the first bishop of the Scots, that believed in Christ, by Pope Celestine."<sup>85</sup> To St. Patrick, it is said, the "ecclesiastical name of Patricius was given," "by Pope Celestine, when he consecrated him a bishop and sent him missionary into Ireland to convert the Irish, in 433."<sup>86</sup> Mr. Green observes that "Christianity had been received" in Ireland "with a burst of popular enthusiasm; and letters and arts sprang up rapidly in its train. The science and biblical knowledge which fled from the continent took refuge in its schools."<sup>87</sup>

"Evils which sapped the strength of the whole empire, told at last on the province of Britain. Wealth and population alike declined under a crushing system of taxation, under restrictions which fettered industry, under a despotism which crushed out all local independence. And with decay within came danger from without."—"In Britain a wall drawn from Newcastle to Carlisle bridled the British tribes, the Picts, as they were called, who had been sheltered from Roman conquest by the fastnesses of the Highlands."<sup>88</sup>—"It was to defend Italy against the Goths that Rome, in the opening of the fifth century,

<sup>83</sup> I Pinnock's Guide to Knowledge, p. 280.

<sup>84</sup> Arnold's Rom. Prov. Adm. pp. 149, 150.

<sup>85</sup> Eccl. Hist., book 5, ch. 24, Chronol. Summ. p. 337.

<sup>86</sup> Perennial Calendar, p. 123 of Lond. edi. 1824; citing Jones's Hist. account, Lond. 1794, p. 13.

<sup>87</sup> Green's Short Hist., ch. 1, § 3, p. 58; I Hist. of Engl. Peop., ch. 2, p. 48.

<sup>88</sup> Green's Short Hist., pp. 43, 44 of N. Y. edi. 1876. The language of the text is from Mr. Green's more recent work—Hist. of Engl. Peop., vol. 1, ch. 1, pp. 21, 22 of N. Y. edi. 1879.

withdrew her legions from Britain, and from that moment the province was left to struggle unaided against the Picts."<sup>89</sup>

There was not of Christianity sufficient to prevent invasions of Britain, nor of local vigour enough to repel the invaders.

"Britain had been occupied by the Romans, but had not become Roman; their formative and cultivating power had affected the land rather than the owners of it. Here too had been splendid cities, Christian churches, noble public works and private mansions; but whatever amount of real union may have existed between the two populations ended when the legions were withdrawn. The Britons forgot the Latin tongue; their clergy lost all sympathy with the growth of religious thought; the arts of war had been disused and the arts of peace never thoroughly learned. The old tribal divisions, which had never been really extinguished by Roman rule, rose from their hiding places; and Britain was as fertile in tyrants after as it was before the Roman conquest. But Roman rule had disarmed and enervated the people: constant foreign invasion found them constantly unprepared, and without hope or energy for resistance. They could not utilize the public works or defend the cities of their masters. So Britain was easy to be conquered in proportion as it was Romanized."<sup>90</sup>—Roman civilization had perished slowly in the midst of a perishing people, who were able neither to maintain it nor to substitute for it anything of their own."<sup>91</sup>

*II. Especially as to influence of Roman law after 411 in England; and in colonies and states wherein England's common law has been the rule of decision.*

"It could not" "otherwise fall out but that some remains of the imperial laws, which through so constant a custom had prevailed" in Britain, "for so many past ages, should, at least, in some measure, subsist in that new or lately settled government, which owed its rise to the will of the people."<sup>92</sup>

The rule of determination which had prevailed before continued to prevail after 411, until altered, and except so far as altered, by sufficient authority.<sup>93</sup>

<sup>89</sup> Id. p. 22.

<sup>90</sup> 1 Stubbs's Const. Hist., ch. 4, p. 60.

<sup>91</sup> Id. ch. 1, p. 3.

<sup>92</sup> Ch. 4, § 1, p. 55, and § 4, p. 70 of Kelham's translation of '*Joannes Seldeni ad Fletam Dissertatio*.' The text is from the latter page.

<sup>93</sup> Dr Wooddesson, referring to the pe-

riod before 411, says: At the close of this period it is not very probable that any other rule of determination should be often referred to, or be much regarded, besides the laws of Rome." 1 Wood. Inst. lxvi. p. 81, edi. 1834. His view is taken as correct, with the limitation above in the text. Any custom or law that may



The force of this view is not impaired by that part of ch. 17 of '*De Laudibus Legum Angliæ*,' wherein, after the lines quoted therefrom on p. 1, Sir John Fortescue says:

"During all that time wherein those several nations and their kings prevailed, England has nevertheless been constantly governed by the same customs, as it is at present, which if they were not above all exception good, no doubt but some or other of those kings, from a principle of justice, in point of reason or moved by inclination, would have made *some alteration* or quite abolished them, especially the Romans, who governed all the rest of the world in a manner by their own laws."<sup>94</sup>

To such language, although it may have been approved by *Popham* C. J.<sup>95</sup> and by Lord *Coke*<sup>96</sup> the plain answer is that 'during all that time' England was *not* 'constantly governed by the same customs' as in Fortescue's time; but in her customs and laws, 'some alteration' *was* made by some kings or conquerors, 'especially the Romans.'<sup>97</sup>

"The civil law remaining in Scotland is said to have been planted there by the Romans who conquered a part thereof."—And England "was likewise subject to the same law till" its "subversion."<sup>98</sup>

The conquest of Britain by the Saxons "differed in several important respects from every other settlement of a Teutonic people within the limits of the Roman empire."—Mr. Freeman says, "The laws of Rome perished utterly; they exercised no influence upon our insular jurisprudence until, in times after the Norman conquest, the civil law was introduced as something utterly exotic. And, even then our insular jurisprudence proved too strong for it; the imperial legislation never gained in England the same supremacy which it gained in most parts of the continent, and even in the Scottish portion of our island."<sup>99</sup>

It may be true (as was printed in 1649) that the Saxons "made so

be relied on is always subject to the enquiry, whether, and how far, it has been altered or changed. *Blackborough v. Davis*, 1 P. Wms. 50.

<sup>94</sup> P. 52 of edi. 1873.

<sup>95</sup> *Le Case del Union*, Moore 797.

<sup>96</sup> Preface to 2 Rep., p. v and p. vii; preface to 3 Rep., pp. xviii, xix, xxi, xxii; and preface to 6 Rep., p. iv.

<sup>97</sup> John Selden's notes on Fortescue *de*

*laud leg. Angliæ*, p. 9 *et seq*; Selden's dissertation *ad Fletam* (mentioned p. 16 note) ch. 4, § 2, p. 56 *et seq* of translation; 1 Spence's Eq. pp. 125, 126.

<sup>98</sup> Pamphlet printed in 1649 and reprinted in Harl. Miscel., vol. 6, p. 218 of edi. 1810.

<sup>99</sup> 1 Freeman's Norm. Conq., ch. 2, pp. 11, 12.

barbarous a conquest of the nation, and so razed out the foundation of former laws, that there are less footsteps of the civil law in this, than in France, Spain, or any other province under the Roman power."<sup>100</sup> It may be true, as supposed by Professor *Stubbs* in his recent valuable work,<sup>101</sup> that "England has inherited no portion of the Roman legislation except in the form of scientific or professional axioms, introduced at a late period, and through the ecclesiastical or scholastic or international or university studies;" and that "her common law is, to a far greater extent than is commonly recognized, based on usages anterior to the influx of feudality, that is, on strictly primitive custom;" and that "what she has that is feudal may be traced through its French stage of development to the common Germanic sources."<sup>102</sup> Mr. *Stubbs* may be right in considering that "the vestiges of Romano-British law which have filtered through local custom into the common law of England, as distinct from those which were imported in the middle ages through the scientific study of law or the insensible infection of cosmopolitan civilization, are infinitesimal."<sup>103</sup> And yet there may be truth in *Ld. Bacon's* observation "that our laws are as mixed as our language; and as our language is so much the richer on that account, so are the laws more complete;"<sup>104</sup> and truth also in some, if not in all, of the words of *Holt*, C. J., in 13 Will., 3:

"Inasmuch as the laws of all nations are doubtless raised out of the ruins of the civil law, as all governments are sprung out of the ruins of the Roman empire, it must be owned that the principles of our law are borrowed from the civil law (and therefore grounded upon the same reason) in many things. And all this may be, though the common law be time out of mind."<sup>105</sup>

<sup>100</sup> 6 Harl. Miscel., p. 218 of edi. 1810. In 1649 it is observed that "by transplanting themselves they changed their soil, not their manners and government." *Id.* vol. 9, p. 345.

<sup>101</sup> "The Constitutional History of England in its origin and development. By William Stubbs, Regius Professor of Modern History." Oxford, vol. 1, 1874; vol. 2, 1875; vol. 3, 1878.

<sup>102</sup> *Id.* vol. 1, ch. 1, p. 10.

<sup>103</sup> *Id.* ch. 4, § 28, p. 62.

<sup>104</sup> Quoted in notes of Andrew Amos on *Fort. de Laud. Angl.* p. 55 of *Cincinnati* edi. 1874. As to the mixed sources of our laws, see 6 Harl. Miscel., p. 218 of edi. 1810.

<sup>105</sup> *Lane v. Cotton*, 12 Mod. 482.

In this way (since 411), in England, and in colonies and states wherein the common law of England has been a rule of decision, Rome has reigned "by her reason, after having ceased to reign by her authority."<sup>106</sup> Her law has been—and should be—studied.<sup>107</sup> Principles echoed from the civil law, often have been—and may continue to be—relied upon in actions, though such actions be termed actions at common law.<sup>108</sup> All this may be consistent with the observation that "the value of the civil law is not to be found in questions which relate to the connexion between the government and the people or in provisions for personal security in criminal cases;" that "in everything which concerns civil and political liberty, it cannot be compared with the free spirit of the English and American common law."<sup>109</sup>

<sup>106</sup> Words of D'Aguesseau; cited in 1 Kent's Com. 516.

<sup>107</sup> 1 Kent's Com. 11; Id. 515 to 548; Science of Law, by Sheldon Amos, pp. 9, 10 of N. Y. edi. 1875.

<sup>108</sup> 13 Geo. 2, *Harvey & wife v. Aston*,

Com. 738; *Pillans &c. v. Mierop &c.*, 3 Burr. 1670; pp. v and vi of preface to Browne's Civil Law; 1 Kent's Com. 11 and 547; *Nugent v. Smith*, L. R., 1 C. P. D. 23, 428.

<sup>109</sup> 1 Kent's Com. 547.

## CHAPTER II.

INSTITUTIONS OF BRITAIN FROM ITS INVASION BY  
THE ENGLISH (449) UNTIL KING EGBERT'S DEATH  
(838).

*1. From what tribes the English people sprung. In 449 begins their history in what had been Britain. Of their progress until about 520; and the opposition of the British king, Arthur; his death and interment at Glastonbury; when and how his remains were found there. Of the historian Gildas, surnamed the wise; and of a later Gildas mentioned as the fourth.*

"The one country which we know to have borne the name of Angeln or England, lay within the district which is now called Sleswick, a district in the heart of the peninsula that parts the Baltic from the Northern seas."—"The dwellers in this district," "seem to have been merely an outlying fragment of what was called the Engle or English folk, the bulk of whom lay probably in what is now Lower Hanover and Oldenberg. On one side of them the Saxons of Westphalia held the land from the Weser to the Rhine; on the other the Eastphalian Saxons stretched away to the Elb. North again of the fragment of the English folk in Sleswick lay another kindred tribe, the Jutes, whose name is still preserved in their district of Jutland. Engle, Saxon and Jute all belonged to the same Low German branch of the Teutonic family; and at the moment when history discovers them they were being drawn together by the ties of a common blood, common speech, common social and political institutions."—"Each of them was destined to share in the conquest of the land in which" the English people "live; and it is from the union of all of them when its conquest was complete that" this "people has sprung."

While marauders from Ireland, whose inhabitants then bore the name of Scots, harried the west of Britain, "the boats of Saxon pirates" "were swarming off its eastern and southern coasts. For

<sup>1</sup> Bede's Eccl. Hist., book I, ch. 14, 15, p. 25 to 29 of ed. 1840; 1 Freem. Norm. Conq., Appendix note A, p. 337 to 366 of ed. 1873; Green's Short Hist., ch. 1,

§ 1, pp. 39, 41, 42 of N. Y. ed. 1876; 1 Green's Hist. of Eng. Peop., ch. 1, pp. 7, 8 of N. Y. ed. 1879.

forty years Britain held out bravely against these assailants; but civil strife broke its powers of resistance, and its rulers fell back at last on the fatal policy by which the empire invited its doom, while striving to avert it,—the policy of matching barbarian against barbarian. By the usual promises of land and pay a band of warriors was drawn for this purpose from Jutland in 449, with two ealdormen Henghist and Horsa at their head." Now begins "the history of Englishmen in the land which from that time they made their own." "They landed on the shores of the Isle of Thanet, at a spot known since as Ebbsfleet." "The work for which the mercenaries had been hired was quickly done." "But danger from the Pict was hardly over when danger came from the Jutes themselves." "The inlet between Thanet and the mainland was crossed, and the Englishmen won their first victory over the Britons in forcing their passage of the Medway at the village of Aylesford.<sup>2</sup> A second defeat at the passage of the Cray<sup>3</sup> drove the British forces in terror upon London; but the ground was soon won back again, and it was not till 465 that a series of petty conflicts which had gone on along the shores of Thanet made way for a decisive struggle at Wippedsfleet. Here, however, the overthrow was so terrible that from this moment all hope of saving Northern Kent seems to have been abandoned, and it was only on its southern shore that the Britons held their ground. Ten years later, in 475, the long contest was over, and with the fall of Lymne," "the work of the first English conqueror was done." "In 477 Saxon invaders were seen pushing slowly along the strip of land which lay westward of Kent between the Weald and the sea." The "coast was guarded by a fortress which occupied the spot now called Pevensey<sup>4</sup> (the future landing place of the Norman Conqueror); and the fall of this fortress of Anderida in 491 established the kingdom of the South-Saxons." "A fresh band of Saxons, a tribe known as the Gewissas," "landed under Cerdic and Cymric on the shores of the Southampton water, and pushed in 495 to the great downs or Gwent, where Winchester offered so rich a prize." "It was not till 519 that a decisive victory at Charford ended the struggle for the 'Gwent' and set the crown of the West-Saxons on the head of Cerdic." Defeat of the invaders about a year afterwards at Badbury or Mount Badon "was followed by a long pause in the Saxon advance from the Southern coast."<sup>5</sup>

<sup>2</sup>In Kent county and distant from Maidstone 4, Rochester 5, and London 32 miles. About one mile north of Aylesford is the monument now called Kitt's Cotty House, the close, as it seems, of a great sepulchral avenue. 1 Dugdale's *Engl. and Wales*, pp. 68, 69; Green's *Short Hist.* ch. 1, § 2, p. 46.

<sup>3</sup>In Kent county is Crayford, distant from Dartford 2, Gravesend 9, and London 13 miles.

<sup>4</sup>In Sussex county. Pevensey is 15 miles from Lewes and 64 miles from London.

<sup>5</sup>Bede's *Eccl. Hist.*, ch. 14, 15, p. 25 to 29 and notes on p. 352 of ed. 1840; 1 Stubbs's *Const. Hist.*, ch. 4, p. 60; Green's *Short Hist.*, ch. 1, § 1, p. 44, § 2, pp. 46, 47, 48; 1 Green's *Hist. of Eng. Peop.*, ch. 1, p. 22 to 25.

In those times is mention of Arthur as "the mighty warrior, general of the armies, and chief of the kings of Britain;" as the commander who was "in twelve battles and gained twelve victories;" the twelfth being "a hard fought battle with the Saxons on Mount Badon."<sup>6</sup> That King Arthur lived in what has been called an "age of chivalry," is quite consistent with the fact that accounts of his adventures, however interesting, are blended with fable;<sup>7</sup> there is sufficient reason for not believing all that is said of him and his knights.<sup>8</sup> But it may not be right to conclude that he did nothing. "Certain it is that the siege of Badon was raised by the Britons in the year 520, and the Saxons were then discomfited in a great battle."<sup>9</sup> Mr. Turner says:

"The battle of Badon Hills, or near Bath, has been celebrated as Arthur's greatest and most useful achievement; a long interval of repose to the Britons has been announced as its consequence."<sup>10</sup> "That he was a courageous warrior is unquestionable; but that he was the miraculous Mars of the British history, from whom kings and nations sunk in panic, is completely disproved."<sup>11</sup>

His last conflict was with his nephew, Medrawd (or Modred), in 542.

"The conflict took place at Camlan, where both Arthur and Medrawd fell; Arthur, mortally wounded, was carried out of the field. From the coast of Cornwall he was conveyed into Somersetshire. Sailing along the shore they reached the Uzella, which they ascended, and the king was committed to the care of his friends in Glastonbury."<sup>12</sup>

<sup>6</sup> Henry of Huntingdon, book 2, pp. 48, 49 of edi. 1853.

<sup>7</sup> *i* Biogr. Britan. tit. Arthur, p. 263 to 269.

<sup>8</sup> Mr. Addison says, "The renowned King Arthur is generally looked upon as the first who ever sat down to a whole roasted ox, which was certainly the best way to preserve the gravy; and it is further added that he and his knights sat about it at his round table and usually consumed it to the very bones before they would enter upon any debate of moment." *Tatler* (No. 148) March 21, 1709-10.

<sup>9</sup> *i* Collyer's Engl., ch. 3, p. 26; *i* Hume's Engl., ch. 1, p. 19 of N. Y. edi. 1850.

<sup>10</sup> Turner's Anglo-Saxons, book 3, ch. 3, p. 248 of vol. I, edi. 1852; *i* Green's Hist. of Eng. Peop., ch. 1, p. 26.

<sup>11</sup> Turner's Anglo Saxons, book 3, ch. 3, p. 250 of vol. I edi. 1852.

<sup>12</sup> *Id.* pp. 251, 252. The town of Glastonbury in Somerset county is mentioned by Thomas Dugdale as "situated in the isle of Avalon, so called from its apples, or from Avallac, a British chief." *4* Dugdale's Engl. and Wales, p. 834.

About this celebrated man there seems to have been, in some respects, less certainty in the time of Henry the first than in that of Henry the second. In a year of Henry the first may be read this passage:

"This year, in a province of Wales, called Ross, the sepulchre of Wawyn, otherwise called Gawen, was found upon the seashore. He was sister's son to Arthur the Great, king of the Britons; a man famous in our British histories, both for civil courtesy, and for courage in the field. *I cannot but esteem the report for fabulous, that his body was fourteen feet in length.* I do rather conjecture that one credulous writer did take that for the length of his body which haply might be the length of his tomb."<sup>13</sup>

Or it might be the distance of his body below the surface of the earth. As to the search for it in 1189, there are interesting accounts;<sup>14</sup> the best of which is supposed to be that of Giraldus Cambrensis, who saw both the bones and the inscription. The substance of his account is stated by Mr. Turner to be this:

"Henry the Second who twice visited Wales had heard from an ancient British bard that Arthur was interred at Glastonbury, and that some pyramids marked the place. The king communicated this to the abbot and monks of the monastery, with the additional information that *the body had been buried very deep* to keep it from the Saxons; and that it would be found not in a stone tomb, but *in a hollowed oak*. There were two pyramids or pillars at that time standing in the cemetery of the Abbey. They dug between these till they came to a leaden cross lying under a stone, which had this inscription, and which Giraldus says he saw and handled. '*Hic jacet sepultus, inclytus Rex Arthurus in insula Avolonia.*' Below this, *at the depth of sixteen feet from the surface, a coffin* of hollowed oak was found containing bones of an unusual size. The leg bone was three fingers (probably in their breadth) longer than that of the tallest man then present. This man was pointed out to Giraldus. The skull was large and shewed the marks of ten wounds. Nine of these had concreted into the bony mass, but one had a cleft in it, and the opening still remained; apparently the mortal blow."<sup>15</sup> The bones were removed into the great church at Glastonbury, and deposited in a mag-

<sup>13</sup> 3 Harl. Miscel., p. 168 of ed. 1809.

<sup>14</sup> 1 Biogr. Britan. tit. *Arthur*, p. 263 to 269.

<sup>15</sup> Turner's Anglo-Saxons, book 3, ch. 3, pp. 252, 253 of vol. I. "Giraldus says, in another place that the bones of one

of Arthur's wives were found there with his, but distinct, at the lower end. Her yellow hair lay apparently perfect in substance and colour, but on a monk's eagerly grasping and raising it up, it fell to dust." *Id.* p. 254.

nificent shrine, which was afterwards placed in obedience to the order of Edward I, before the high altar."<sup>16</sup>

The historian *Gildas*, surnamed *the wise*, was born in the city of Bath, and is called *Badonicus*. He has also been "styled Querulus, because the little we have of his writing is only 'a complaint.'"

A quaint English writer expresses "wonder that so learned a critic as *Dr. Ferrard Vossius* should attribute the comedy of 'Aulularia,' in Plautus, to this our Gildas, merely because that comedy is otherwise commonly called 'Querulus'; whereas indeed their language is different; that in 'Aulularia' tolerably pure (though perchance coarser than the rest in Plautus); whilst the style of Gildas is hardly with sense to be climbed over, it is so harsh and barbarous. Besides," (he says,) "I do not believe that Gildas had a drop of comical blood in his veins, or any inclination to mirth and festivity; and if he had prepared anything scenical to be acted on the theatre, certainly it would have been a tragedy relating to the ruin and destruction of his nation. Some variety there is about the date of his death which most probably is assigned *anno 570*."<sup>17</sup>

An Englishman of recent times, says:

"Gildas's work gives a superficial sketch of British history under the Romans, and during the wars between the Britons and the Picts and Scots, and the Saxon invasions, and also an account of the vices of the kings, clergy and laity of the time. This work is supposed to have been written about A. D. 581."<sup>18</sup>

*Gildas the fourth* is mentioned as a Welsh-Scotch-Irishman.<sup>19</sup> Fuller says:

"Many the books imputed to him, of the wonders and first inhabitants of Britain, of King Arthur and his unknown sepulchre. So that now we can teach Gildas what he knew not, namely, that King Arthur was certainly buried at Glastonbury."<sup>20</sup>

<sup>16</sup> He visited Glastonbury with his queen in 1276, and had the shrine of Arthur opened to contemplate his remains. They were both so interested by the sight that the king folded the bones of Arthur in a rich shroud, and the queen those of his wife, and replaced them reverentially in their tomb." Id. p. 254.

<sup>17</sup> 3 Fuller's Worthies, p. 101 of ed. 1840.

<sup>18</sup> Dr. Giles. See Allibone's Dict. tit. *Gildas*.

<sup>19</sup> Wales sharing in him two parts of the three, viz: his birth and death, the largest part of his life belonging to Ireland, where he studied. He flourished A. D. 860. 3 Fuller's Worthies, p. 498.

<sup>20</sup> Id. p. 498. Having mentioned four of the name of Gildas, the second of whom is surnamed *Sapiens* as before mentioned, Fuller says, he "is worth all the rest (were there 400 of them); whom I behold as a *sun* indeed, shining with the lustre of his own desert, whilst two of



2. *Of the Pandects and Institutes in 533, the Codex Repetitæ Prælectionis, in 534, and the Novellæ in 565; which constitute the Corpus Juris Civilis.*

In the reign of the emperor Justinian, and by his direction, Trebo-  
nian, distinguished for his great learning in jurisprudence, had, with  
the assistance of sixteen persons, eminent either as magistrates or  
professors of law, extracted from the works of forty civilians, a sys-  
tem of law, and digested it into fifty books, which constitute the great  
work known as the *Digest, or Pandects*. With it, an elementary  
treatise, comprising in four books the general principles of the system  
of jurisprudence contained in it, and called *The Institutes*, was pro-  
mulgated by the emperor's direction (Dec. 30, 533). He addressed  
them, as imperial laws, to his tribunals of justice and to all the acade-  
mies where the science of jurisprudence was taught; they were to  
supersede all other law, and to be the only legitimate system of juris-  
prudence throughout the Roman empire. The *Codex Repetitæ Præ-  
lectionis* was published in the following year. The edicts thereafter  
promulgated were collected into one volume, in the last year of the  
same reign (565), and published under the name of *Novellæ*. The  
Pandects, the Institutes, the Codex Repetitæ Prælectionis and the  
Novels constitute the *Corpus Juris Civilis*.<sup>21</sup>

3. *Slowness of English conquest. Within what time Britain became  
a land of Englishmen—a Teutonic society on the wreck of  
Rome.*

Though seventy years had passed since the victory of Aylesford,  
only the outskirts of Britain were won; the invaders were masters as  
yet but of Kent, Sussex, Hampshire and Essex.—They “had been  
drawn from two only of the three tribes,” mentioned in § 1 p. 32  
“from the Saxons and the Jutes. But the main work of conquest  
was to be done by the third—by the tribe which bore that name of  
Engle, or Englishmen, which was to absorb that of Saxon or Jute,  
and to stamp itself on the people which sprang from the union of the  
conquerors as on the land that they won.”—“The line of defences  
which had hitherto held the invaders at bay, was turned by their ap-  
pearance on the Humber and the Trent.”—“One part of the English

the others are but so many meteors  
about him.” *Id.*

<sup>21</sup> Horæ Juridicæ Subsecivæ, v. 8, pp.  
57, 58 of Phila. edi. 1808; “*Joannes*

*Seldeni ad Fletam Dissertatio*,” ch. 5,  
§ 4, 5, 6, and ch. 6, § 1, p. 83 to 118 of  
translation published in 1771.

force marched from the Humber over the Yorkshire wolds to found what was called the kingdom of the Deirans."—"Seizing the valley of the Don and whatever breaks there were in the woodland that then filled the space between the Humber and the Trent, the Engle followed the curve of the latter river and struck along the line of its tributary, the Soar. Here, round the Roman Ratae, the predecessor of our Leicester, settled a tribe known as the Middle English, while a small body pushed further southwards, and under the name of 'South Engle' occupied the ðolitic upland that forms our present Northamptonshire. But the mass of the invaders seem to have held to the line of the Trent, and to have pushed westward to its headwaters. Repton, Lichfield and Tamworth mark the country of these western Englismen, whose older name was lost in that of Mercians, or men of the march."

"While Jute and Saxon and Engle were making themselves masters of Central and Southern Britain, the English who had landed on its northernmost shores had been slowly winning for themselves the coast district between the Firth and the Tyne which bore the name of Bernicia. Their progress seems to have been small till they were gathered into a kingdom in 547 by Ida, the 'Flame-bearer,' who founded a site for his king's town on the impregnable rock of Bamborough; nor was it till the reign of his fourth son, Æthelric, that they gained full mastery over the Britons along their western border."

"In 552," the capture by the West-Saxons, "of the hill-fort of Old-Sarum threw open the reaches of the Wiltshire downs, and a march of King Cuthwulf on the Thames made them masters, in 571, of the districts which now form Oxfordshire and Berkshire. Pushing along the upper valley of Avon to a new battle at Barbury Hill, they swooped at last from their uplands on the rich prey that lay along the Severn. Gloucester, Cirencester and Bath, cities which had leagued under their British kings to resist this onset, became, in 577, the spoil of an English victory at Deorham, and the line of the great western river lay open to the arms of the conquerors. Once the West-Saxons penetrated to the borders of Chester; and Uriconium, a town beside the Wrekin, which has been recently brought again to light, went up in flames."—"With the victory of Deorham the conquest of the bulk of Britain was complete."—"Britain had in the main become England, and within this new England a Teutonic society was settled on the wreck of Rome."—"For the most part the Britons were not slaughtered; they were defeated and drew back."—"How slow the work of English conquest was may be seen from the fact that it took nearly thirty years to win Kent alone, and sixty to complete the conquest of Southern Britain; and that the conquest of the bulk of the island was only wrought out after two centuries of bitter warfare. But," "of all the German conquests this proved the most thorough and complete. So far as the English sword in these earlier days had reached, Britain had become England, a land, that is, not of Britons but of Englishmen."<sup>22</sup>

<sup>22</sup> Green's Short Hist., ch. 1, § 1, 2, Peop., ch. 1, p. 25 *et seq.*, ch. 2, p. 28 to pp. 51, 52, 53; 1 Green's Hist. of Engl. 31 and p. 37.

4. *Of the Christian Church in Western Europe; St. Columba and the monastery of Icolmkill. England's condition in the times of St. Columba and Ethelbert. Of the missionaries from Italy to England in 596. Whatever their influence upon laws and literature, they did not abolish previous notions of equity. Ethelbert's Code is the most ancient specimen that remains of English legislation. Of the spot on which St. Paul's is built.*

"Before the landing of the English in Britain, the Christian church stretched in an unbroken line across Western Europe to the farthest coast of Ireland. The conquest of Britain by the pagan English thrust a wedge of heathendom into the heart of this great communion and broke it into two unequal parts. On one side lay Italy, Spain and Gaul, whose churches owned obedience to and remained in direct contact with the See of Rome; on the other, practically cut off from the general body of christendom, lay the church of Ireland."<sup>23</sup>

Consistent with what appears in Bede's Chronological Summary<sup>24</sup> are statements by others.

"Columba (St.) the founder of the monastery of Icolmkill, was a native of Ireland; from which country he went to Scotland about 565. Here he received from the reigning king Bricius, the isle of Hy, where he established his famous seminary; and acquired an uncommon influence. He died in 597."<sup>25</sup>

In St. Columba's time, England was, as to Christianity, in a very different condition from Ireland and Scotland. "Alone among the German assailants of Rome, the *English* stood aloof from the faith of the empire they helped to overthrow."<sup>26</sup> But strife between the conquering tribes brought about momentous changes.

"Once masters of the Britons, the Bernician Englishmen turned to conquer their English neighbours to the south, the men of Deira, whose first king, Ælla, was now sinking to the grave. The struggle filled the foreign markets with English slaves, and one of the most

<sup>23</sup> 1 Green's Hist. of Eng. Peop., ch. 2, p. 48 of N. Y. ed. 1879.

<sup>24</sup> "A. D. 565, the priest Columba came out of Scotland into Britain, to instruct the Picts, and built a monastery in the isle of Hii." Bede's Eccl. Hist., book 3, ch. 24, p. 337 of ed. 1840.

<sup>25</sup> Watkins' Biogr. Dict., ed. 1822; 3

Encyclop. Amér., p. 345 of Phila. ed. 1830; 6 Id. pp. 530, 531 tit. *Icolmkill*. Of Dr. Johnson's visit to this island in October, 1773, there is an account in 5 Boswell's Johnson, ch. 3, p. 72, *et seq.*, of ed. 1835.

<sup>26</sup> Green's Hist. of Engl. Peopl., ch. 2, p. 32.

memorable stories in our history shews us a group of such captives in the market place of Rome."<sup>27</sup>

In the fourteenth year of Mauritius Tiberius (A. D. 596), and while Ethelbert was reigning in Kent, Pope Gregory I sent to the English nation, Augustine, with several other monks;<sup>28</sup> and they resided in Canterbury, the metropolis of Ethelbert's dominions.<sup>29</sup> Gregory sent to Augustine answers to several questions,<sup>30</sup> and to Ethelbert, in 601, a letter with presents.<sup>31</sup>

Ethelbert's wife was Bereta, a daughter of the Frankish king, Charibert, of Paris; and, like her Frankish kindred, was a Christian. The consequences were important.

"Canterbury, the earliest royal city of German England, became a centre of Latin influence. The Roman tongue became again one of the tongues of Britain, the language of its worship, its correspondence, its literature."—"The civilization, art, letters, which had fled before the sword of the English conquerors, returned with the Christian faith."—"It is impossible not to recognize the result of the influence of the Roman missionaries in the fact that codes of the customary English law began to be put in writing soon after their arrival."<sup>32</sup>

As may be seen in § 2, p. 37, Roman laws had now reached an important stage. Bede states that "among other benefits which Ethelbert conferred upon the nation, he also, by the advice of wise

<sup>27</sup> Few traditions of English history are more familiar or more touching than the one which portrays Gregory's meeting with the fair haired Angles in the market place of Rome, and his celebrated "*Non Angli sed Angeli*." 1 Hume's Eng., ch. 1, p. 25 of N. Y. edi. 1850, 1 Green's Hist. of Engl. Peop., book 1, ch. 2, pp. 37, 38 of edi. 1879.

<sup>28</sup> Bede's Eccl. Hist., book 1, ch. 23, p. 39 to 41, and book 5, ch. 24, p. 337 of edition 1840.

<sup>29</sup> Id. p. 41, Augustine was ordained Archbishop of the English nation by Etherius, Archbishop of Arles (Id. p. 45), and having his episcopal see granted him in the royal city, consecrated therein a church (said to have been built by the ancient Roman Christians) and erected

near the city a monastery. Id. ch. 33, p. 70.

<sup>30</sup> To the second question, "Why are there different customs in different churches," the answer concludes thus: "For things are not to be loved for the sake of places, but places for the sake of good things. Choose, therefore, *from every church* those things that are pious, religious and upright, and having, as it were, made them up in one mass, let the minds of the English be accustomed thereto." Bede, p. 47.

<sup>31</sup> Id. ch. 32, p. 67 to 69.

<sup>32</sup> Turner's Engl., book 2, ch. 2, p. 210 of vol. IV, edi. 1825; Green's Short Hist., ch. 1, § 3, p. 55; 1 Green's Hist. of Engl. Peop., ch. 2, p. 40 to 42.

persons, introduced among them the Roman laws.<sup>33</sup> But Bede is thought to have used the words 'Roman laws' in a narrow sense.<sup>34</sup> The laws of Ethelbert are the most ancient specimens of the Anglo-Saxon legislation which remain.<sup>35</sup> Dr. Lingard is speaking of the Code of Laws which Ethelbert published when he says:

"For this improvement he was indebted to the suggestions of the missionaries, who, though they had been accustomed to the forms and decisions of Roman jurisprudence, did not, in legislating for the Saxons, attempt to abolish the national notions of equity, but wisely retained the principle of pecuniary compensation, a principle universally prevalent in the northern nations."<sup>36</sup>

The spot on which St. Paul's is built had been used by the Romans 'for a cemetery, or burial place.'

"On the erection of the present building many Roman funeral vases, lacrymatories, and other articles used in sepulture, were found at a considerable depth under the surface. Next to these lay in rows, skeletons of the ancient Britons; and immediately above them, Saxons in stone coffins, or in graves lined with chalk, together with pins of ivory and box-wood, which had fastened their grave clothes. The earliest building which is actually recorded to have stood on this site, was a Christian church, built about 610, by Ethelbert, king of Kent."<sup>37</sup>

5. *After 607 Britain, as a single political body, ceased to exist. Change in the attitude of English kings towards each other. Struggle for supremacy. Genius for government shewn by Eadwine, king of Northumbria; he was slain in 633.*

After the battle, in or about 603, at Dœgsa's Stan, perhaps Dawson, in Liddesdale, and that at Chester, in 607, Britain, as a single political body, ceased to exist.

"The warfare of Briton and Englishman died down into a warfare of separate English kingdoms against separate British kingdoms,

<sup>33</sup> Eccl. Hist., book 2, ch. 5, p. 89.

<sup>34</sup> There being next after the words "Roman laws" the following: "which being written in the English tongue are still kept and observed by them." *Ibid.*

<sup>35</sup> Wilk. Leg. Sax., p. 1-7; cited in Turner's Hist. of Anglo-Saxons, book 8, ch. 3, p. 148 of vol. III, ed. 1852.

<sup>36</sup> Lingard's Engl., vol. 1, ch. 2, p. 79 of Boston ed. 1853.

<sup>37</sup> Penny Magazine for 1832 (May 12), p. 57. It was dedicated to St. Paul, and was indebted for improvements to St. Eckenwall, the bishop of the diocese, who died in 681. It is related that it was accidentally burned down in 961, and rebuilt the same year. *Ibid.*

of Northumbria against Cumbria and Strathclyde, of Mercia against modern Wales, of Wessex against the tract of British country from Mendip to the Land's End."<sup>38</sup>

If might now be seen an important change in the attitude of the English kings towards each other,<sup>39</sup> and the beginning of a struggle for supremacy,<sup>40</sup> that struggle was for a time affected by the deaths, in 613,<sup>41</sup> of Ethelbert, king of Kent, and in 617, of Æthelfrith, king of Northumbria.<sup>42</sup> That king was succeeded by Eadwine, under whom the greatness of Northumbria reached its height.

"Within his own dominions Eadwine displayed a genius for civil government which shews how utterly the mere age of conquest had passed away. With him began the English proverb so often applied to after kings: 'A woman with her babe might walk scatheless from sea to sea in Eadwine's day.'"<sup>43</sup>

Penda, king of Mercia, allied himself with the Welsh king Cadwallon, for an attack on Eadwine. The armies met in 633 at Hatfield<sup>44</sup> (or Hæthfield), and in the fight which followed, Eadwine was defeated and slain.<sup>45</sup>

<sup>38</sup> Green's Short Hist., ch. 1, § 2, 3, pp. 52, 53; 1 Green's Hist. of Eng. Peop., ch. 2, pp. 42, 43.

<sup>39</sup> Early historians speak of seven or eight independent kingdoms being established by the conquerors on the island and called a Heptarchy or Octarchy; and of there being frequently one who was designated by the title of Bretwalda, the walda or ruler of the Saxons against the Britons. Hall. Mid. Ages, ch. 8, part 1, p. 2, of vol. II, Phil. edi. 1824; 1 Lingard's Engl., ch. 2, pp. 73, 74; Turner's Anglo-Saxons, book 3, ch. 8, p. 326 of vol. I, edi 1852. Forester's note to Henry, of Huntingdon, book 2, p. 51. "The Bretwaldadom" is the subject of notice in 1 Freem. Norm. Conqu. Appendix B, p. 366 to 376 of edi. 1873.

<sup>40</sup> Green's Short Hist., ch. 1, § 3, p. 53; 1 Green's Hist. of Eng. Peop., ch. 2, pp. 43, 44.

<sup>41</sup> King Ethelbert died Feb. 24, 613. Bede's Eccl. Hist., book 2, ch. 5, p. 89 of edi. 1840.

<sup>42</sup> "Marching in 617 against Rædwald, king of East-Anglia, who had sheltered Eadwine, an exile from the Northumbrian kingdom, he perished in a defeat at the river Idle." Green's Short Hist., ch. 1, § 3, p. 53.

<sup>43</sup> Id. pp. 55, 56. "Northward his frontier reached to the Firth of Forth, and here, if we trust tradition, Eadwine founded a city which bore his name, Edinburgh, Eadwines burgh." 1 Green's Hist. of Eng. Peop., pp. 44, 45.

<sup>44</sup> In the West Riding of York or Hatfield. It is distant from Doncaster 6, and from London 168 miles.

<sup>45</sup> Green's Short Hist., ch. 1, § 3, p. 57; 1 Green's Hist. of Eng. Peop., ch. 2, p. 47.

6. *Eadwine succeeded by Oswald, who in his youth found refuge within the monastery on the isle of Iona. Greatness of Oswald's power. Of Sigebert, king of the East Angles, who in 635 wrote a book of the laws of England. In 642 Oswald slain; succeeded by Oswi, who died in 670. Who became king of the Mercians.*

Eadwine's successor was Oswald, who in his youth found refuge within the monastery raised by Columba on the isle of Iona, off the west coast of Scotland.<sup>46</sup>

"The Welsh had remained encamped in the heart of the North, and Oswald's first fight was with Cadwallon. A small Northumbrian force gathered in 635 near the Roman wall, and pledged itself, at the new king's bidding, to become Christian if it conquered in the fight. Cadwallon fell fighting on the 'Heaven's Field,' as after times called the field of battle; the submission of Deira to the conqueror restored the kingdom of Northumbria; and for nine years the power of Oswald equalled that of Eadwine."<sup>47</sup>

A fugitive from Redwald's enmity, and living in banishment, Sigbercht (or Sigabert or Sigesbert) was baptized in France, and after the death of his brother Eorpwald, the successor of Redwald,<sup>48</sup> was in 635, '*orientalium Anglorum Rex*,' and 'wrote a book of the laws of England, calling it *Legum Instituta*.'<sup>49</sup> He founded, about 638, a monastery at Bury St. Edmunds,<sup>50</sup> and retired to it, but his people brought him from his cell, on news of an invasion by Penda. Placed in the front, and bearing no weapon but a wand, Sigebert fell in the battle, and his army was routed.<sup>51</sup>

In 642, Oswald marched to deliver East Anglia from Penda, but in a battle called the battle of the Maserfeld was overthrown and slain.<sup>52</sup>

Oswi (third son of Æthelfrith) having been accepted by all Northumbria as its sovereign, was in 655 successful against his opponents in the field of Winwœd, by Leeds. Then Penda, king of the Mercians, being slain, King Oswi governed them and the people of

<sup>46</sup> Id. p. 49.

<sup>49</sup> Preface to 3 Rep, p. xix.

<sup>47</sup> 1 Green's Short Hist., ch. 1, § 3, p. 57; 1 Green's Hist. of Engl. Peop., ch. 2, p. 47 to 50.

<sup>50</sup> 1 Dugdale's Eng. & Wales, pp. 321, 322.

<sup>51</sup> Green's Short Hist., ch. 1, § 3, p. 59.

<sup>48</sup> Bede's Eccl. Hist., book 2, ch. 15, pp. 113, 114; book 3, ch. 18, p. 157.

<sup>52</sup> Id.; 1 Green's Hist. of Engl. Peop. p. 50.

other southern provinces for three years, when he gave to Penda's son, Peadá, the kingdom of the Southern Mercians. Soon Peadá was killed, and three generals of the Mercians set up for their king (against King Oswi) Wulfhere, son to Penda; and he governed the Mercians seventeen years. Meanwhile King Oswi died (in 670),<sup>53</sup> survived by his minister, Benedict, who is mentioned in the next section.

7. *Great Council at Whitby in 664. Theodore of Tarsus began in 668 as Archbishop of Canterbury. His work as to the Church supplied a mould for the civil organization of the state; his synods and their canons led the way to Parliaments and a system of laws. Of Benedict, abbot of the monastery where Bede was educated; and of Whitby, the Westminster of Northumbrian kings.*

On the summit of the dark cliffs of Whitby, looking out over the northern sea, an abbey was reared. Thither, in 664, Oswi summoned a great council to decide the ecclesiastical allegiance of England; whether its metropolitan was at Rome or was the abbot of Iona. In 668 Theodore of Tarsus began his work as archbishop of Canterbury.<sup>54</sup>

"The work of Theodore lay mainly in the organization of the episcopate, and thus the Church of England, as we know it to-day, is the work, so far as its outer form is concerned, of Theodore."—"In his arrangement of dioceses and the way in which he grouped them round the See of Canterbury, in his national synods and ecclesiastical canons, Theodore did unconsciously a political work."—"The regular subordination of priest to bishop, of bishop to primate, in the administration of the church, supplied a mould on which the civil organization of the state quietly shaped itself. Above all, the councils gathered were the first of our national gatherings for general legislation. It was at a much later time that the wise men of Wessex, or Northumbria, or Mercia learned to come together in the Witenagemote of all England. The synods which Theodore convened as religiously representative of the whole English nation, led the way by their example to our national parliaments. The canons which these synods enacted led the way to a national system of law."<sup>55</sup>

<sup>53</sup> Bede's Eccl. Hist., book 3, ch. 24, p. 171 to 174, and p. 338 of ed. 1840; 1 Lingard's Engl., ch. 2, p. 103; Green's Short Hist., ch. 1, § 3, p. 66; 1 Green's Hist. of Engl. Peop., ch. 2, p. 51 and p. 60.

<sup>54</sup> Bede's Eccl. Hist., book 3, ch. 24, p. 173; book 4, ch. 1, pp. 194, 195; Green's Short Hist., ch. 1, § 3, p. 62, pp. 64, 65; 1 Green's Hist. of Engl. Peop., ch. 2, p. 54 to 57.

<sup>55</sup> Id. p. 57 to 59.



"The organization of the episcopate was followed by the organization of the parish system."—"But this parish system is probably later than Theodore."<sup>56</sup>

Benedict (surnamed Biscop or Bishop), minister of King Oswi, was of extraordinary learning; indefatigable in its pursuit, and in the improvement of his country. He travelled to Rome several times, and brought to England a large and curious library. He was founder of the monastery of Weymouth, and was its abbot when Bede, at seven years of age, was placed there to be educated; which was, according to one computation, in 680, and according to another, in 684.<sup>57</sup>

As to Whitby, in Chester county, there may be inaccuracy in part of what is said in Dugdale's *England and Wales*, vol. 8, p. 1539. The place mentioned in Bede's *Eccl. Hist.*, book 3, ch. 24, p. 173, is stated in notes of Dr. Giles, p. 363, to be *now* Whitby in Yorkshire."

"Whitby became the Westminster of the Northumbrian kings; within its walls stood the tombs of Eadwine and of Oswi, with nobles and queens grouped around them."<sup>58</sup>

8. *Of the abbeys of Peterborough and Crowland. War between Wulfhere, king of Mercia, and Ecgfrith, king of Northumbria. War against the Britons revived. Ecgfrith killed in battle in 685. The blow viewed as fatal for Northumbrian greatness. Parliament in 697, near Maidstone; its enactments. How Northumbria obtained peace with Æthelred, successor of Wulfhere or Withred.*

In the western woods Bishop Ecgwine found a site for an abbey, round which gathered the town of Evesham;<sup>59</sup> and the eastern fenland was soon filled with religious houses. Here, through the liberality of King Wulfhere, rose the abbey of Peterborough. Here too, Guthlac, a youth of the royal race of Mercia, sought a refuge from the world in the solitudes of Crowland, and so great was the reverence he won that only two years had passed since his death when the stately abbey of Crowland rose over his tomb."—But "Northumbria

<sup>56</sup> "The system of tythes which has been sometimes coupled with his name, dates only from the close of the eighth century." *Id.* p. 59.

<sup>57</sup> *Life of Bede*, pp. xiii and xiv, and also p. 342.

<sup>58</sup> *Green's Short Hist.*, ch. 1, § 3, p. 62.

<sup>59</sup> In Worcester county. Evesham is 14 miles from Worcester and 100 from London.

remained the dominant state in Britain; and Ecgrith, who succeeded Oswin in 670, so utterly defeated Wulfhere when war broke out between them, that he was glad to purchase peace by the surrender of Lincolnshire."<sup>60</sup>

"The war between Briton and Englishman, which had languished since the battle of Chester, had been revived some twelve years before by an advance of the West-Saxons to the south-west. Unable to save the possessions of Wessex north of the Thames from the grasp of Wulfhere, their king, Cenwalh, sought for compensation in an attack on his Welsh neighbors. A victory at Bradford,<sup>61</sup> on the Avon, enabled him to overrun the country near Mendip, which had till then been held by the Britons; and a second campaign in 658, which ended in a victory on the skirts of the great forest that covered Somerset to the east, settled the West-Saxons as conquerors round the sources of the Parret. It may have been the example of the West-Saxons which spurred Ecgrith to a series of attacks upon his British neighbors in the west which widened the bounds of his kingdom."—"The Firth of Forth had long been the limit of Northumbria, but the Picts to the north of it owned Ecgrith's supremacy. In 685, however, the king resolved on their actual subjection, and marched across the Forth."—Soon a "fugitive, escaped from the slaughter, told that the Picts had turned desperately to bay as the English army entered Fife, and that Ecgrith and the flower of his nobles lay a ghastly ring of corpses on the far off moorland of Nechtsmere. The blow" has been viewed as "a fatal one for Northumbrian greatness."<sup>62</sup>

There are accounts of a parliament or great council which was held in 697 at Bursted near Maidstone, under Withred, king of Kent and Mercia, in which Berthwald, archbishop of Canterbury, presided, and at which all the prelates and military men assembled.<sup>63</sup>

Æthelred, successor of Wulfhere, or Withred, having attacked Northumbria, on the Mercian border, the war was only ended by a plan which left Æthelred master of middle England, and free to attempt conquest of the south.<sup>64</sup>

*9. Alfred, who became king of Northumbria in 685 reigned till 705, and died greatly esteemed. His high character.*

Success in war is not the only kind of greatness; nor is it always

<sup>60</sup> Green's Short Hist., ch. 1, § 3, p. 66; 1 Green's Hist. of Engl. Peop., ch. 2, pp. 60, 61.

<sup>61</sup> In Wilts county. Bradford is 31 miles from Salisbury and 82 from London.

<sup>62</sup> Green's Short Hist., ch. 1, § 3, p.

67 to 70, ch. 4, pp. 70, 71; 1 Green's Hist. of Eng. Peop., ch. 2, p. 61 to 63.

<sup>63</sup> Some of the enactments on this occasion are in Penny Magazine for 1835, Dec. 12, p. 497.

<sup>64</sup> 1 Green's Hist. of Engl. Peop., ch. 2, p. 63.

the kind that is of the greatest value to one's country. Alfred, the next king of Northumbria, is mentioned as the first literary king among the Anglo-Saxons.

"His name alone would interest us as the precursor of the greater sovereign, his name-sake; but the similarity of his intellectual taste and temper with the pursuits and sentiments of the celebrated Alfred of Wessex, makes his character still more interesting."—He had "voluntarily retired into Ireland that he might pursue his unambitious studies. For fifteen years he enjoyed a life of philosophic tranquillity and progressive improvement."—"He governed the kingdom to which he was now invited, with the same virtue with which he had resigned it; he derived his happiness from the quiet and enjoyments of his people."<sup>65</sup> He was "respected by his neighbours, beloved by his subjects and praised by the learned whom he patronized."<sup>66</sup> Yet, though attached to the studies of the clergy,<sup>67</sup> he was not their indiscriminate instrument."<sup>68</sup>

After reigning "over the province which his knowledge enlightened, and his virtues cherished, for 19 years, he died in 705."<sup>69</sup>

10. *Of Ina successor of Centwine (or Ceadwalla) as king of Wessex. Ina's Code the earliest collection of West Saxon laws which remains; it has gained him fame.*

The war begun with the Britons by Centwine (or Ceadwalla) king of Wessex, was by his successor Ina (or Ine or Ini), the greatest of its early kings, carried on, during the whole of his long reign from 688 to 726.

Under him, "the West Saxons" "became masters of the whole district which now bears the name of Somerset. The conquest of Sussex and of Kent on his eastern border made Ine master of all Britain south of the Thames, and his repulse of a new Mercian king, Ceolred, in a bloody encounter at Wodnesburh<sup>70</sup> in 714 seemed to establish

<sup>65</sup> Turner's Anglo-Saxons, book 3, ch. 9, p. 332 to 334 of vol. 1, edi. 1852.

<sup>66</sup> Lingard's Engl., vol. 1, ch. 3, p. 108, of edi. 1853. Mr. Turner says, "he encouraged literature, received with kindness the Asiatic travels of Arculfus, who had visited Greece, Syria and Egypt, (and which had been written by Adamnan,) liberally rewarded the author, and by his bounty caused the composition to be imparted to others." Hist. Anglo-Saxons, book 3, ch. 9, p. 334.

<sup>67</sup> Bede's Eccl. Hist., book 5, ch. 15, 16, 17, p. 300 to 305 of edi. 1840.

<sup>68</sup> Turner's Anglo-Saxons, book 3, ch. 9, p. 334 of vol. 1, edi. 1852.

<sup>69</sup> Id. 335; Bede's Eccl. Hist., ch. 24, p. 339.

<sup>70</sup> The ancient town of Wednesbury (frequently called Wedgebury) is in Stafford county; 4 miles from Walsall, 8 from Birmingham, and 118 from London.

the three-fold division of the English race between three realms of almost equal power.”<sup>71</sup>

But Ina's time was not wholly occupied with thoughts of war.<sup>72</sup> A parliament was holden in his time; and perhaps it was meant to be referred to by Sir Edward Coke, Speaker of the House of Commons in the 35th year of the reign of Queen Elizabeth; it is curious that he is reported in his address to that Queen to have spoken thus:

“In the times of the West Saxons, a Parliament was held by the noble Queen Ina, by these words: ‘I, Ina, Queen of the West Saxons, have caused all my Fatherhood, Aldermen and wise commons, with the godly men of my kingdom, to consult of weighty matters, &c.’ which words do plainly show the parts of this court still observed to this day. For in Queen Ina is your majesty's most royal person represented.”<sup>73</sup>

Perhaps Elizabeth's “most royal person” is “represented” in the noble king Ina or in his queen (Ethelburga).<sup>74</sup>

“As a warrior Ina was equal, as a legislator he was superior, to the most celebrated of his predecessors. In the fifth year of his reign he assembled the Witen-gemot, and ‘with the advice of his father, Cenred, of his bishops, Hedda and Erconwald, of all his ealdormen, and wise men and clergy,’ enacted seventy-nine laws, by which he regulated the administration of justice, fixed the legal compensation for crimes, checked the prevalence of hereditary feuds, placed the conquered Britons under the protection of the state, and exposed and punished the frauds which might be committed in the transfer of merchandise and the cultivation of land.”<sup>75</sup>

Mr. Turner concurs in appreciating the fame which Ina has gained

<sup>71</sup> Green's Short Hist., ch. 1, § 4, pp. 70, 71; 1 Green's Hist. of Engl. Peop., ch. 2, p. 63.

<sup>72</sup> *Id.*

<sup>73</sup> Townshend's Collections, p. 45 of edi. 1680.

<sup>74</sup> Henry of Huntingdon, book 4, p. 120 of edi. 1853. But Elizabeth's person is represented, not more truly because of, than it would be without, such transformation as is expressed or implied in the language so reported as used by the Speaker of the House.

<sup>75</sup> Lingard's Engl., vol. 1, ch. 3, pp. 135, 136 of Boston edi. 1853. Mr. Turner speaks of Ina in his introduction to his laws, mentioning distinctly the three orders of the nation as assisting and concurring in their formation.—“My bishops and all my ealdormen, and the eldest *witan of my people*, and a great collection of God's servants.” Mr. Turner considers that “here the nobles, *the people*, and the clergy are distinctly recognized.” Turner's Anglo-Saxons, book 8, ch. 3, p. 168 of edi. 1832.

by his legislation. Referring to his collection of laws which yet remains,<sup>76</sup> the historian of the Anglo-Saxons says:

"He deserves the gratitude of mankind in common with every other lawgiver. Whoever applies himself to mark the useful limits of human action, to set boundaries to individual selfishness, to establish the provisions of justice in defence of the weak or injured, and to rescue the criminal from punishments of caprice or favour, is a character entitled to the veneration of mankind."<sup>77</sup>

*II. Æthelbald, king of Mercia, and Ceolwulf, king of Northumbria. To Ceolwulf is dedicated Venerable Bede's Ecclesiastical History. Of Bede and Alcuin; the schools of Jarrow and York.*

In the reign of King Ina, Northumbria was governed by the four kings named below.<sup>78</sup> After 716, when Ceolred, the successor of Æthelred, king of Mercia, died, and Mercia chose Æthelbald for its king,—and after 726, when Ina, king of the West-Saxons laid down his crown and retired to Rome,—Æthelbald "penetrated into the very heart of the West-Saxon kingdom."<sup>79</sup>

In 728, on the 9th of May, Osric, king of Northumbria, died, and was succeeded by Ceolwulf, to whom is addressed by Venerable Bede (in 731) the epistle dedicatory of the "Ecclesiastical History of the English Nation."<sup>80</sup>

Æthelbald, king of Mercia, captured from the West-Saxons the royal town of Somerton<sup>81</sup> at a time (733) when under Ceolwulf's peaceful reign, Northumbria had become "the literary centre of the Christian world in western Europe. No schools were more famous than those of Jarrow and York."<sup>82</sup>

<sup>76</sup> Wilkins' *Leges Saxonicae*, p. 14-27.

<sup>77</sup> Turner's *Anglo-Saxons*, book 3, ch. 9, p. 339 of vol. I.

<sup>78</sup> Alfred was succeeded by his son Osred, a youth only eight years old. He reigned eleven years, and fell in battle near Mere in 716. Cenred, his successor, reigned two years, after whose death Osric reigned a number of years; stated in book 4, of Henry of Huntingdon, on p. 119, to be *eleven*, and on p. 123, to be *fourteen*. *Eleven* is the right number according to Bede's *Eccl. Hist.*, book 5, ch. 24, p. 333.

<sup>79</sup> Green's *Short Hist.*, ch. I, § 4, p. 71; I Green's *Hist. of Engl. Peop.*, ch. 2, p. 64.

<sup>80</sup> *Eccl. Hist.*, book 5, ch. 23, p. 334 and p. 336.

<sup>81</sup> Somerton, wherein Ina and other West-Saxon kings had held their courts, is in Somerset county and distant from Wells 12, from Taunton 18, and from London 123 miles.

<sup>82</sup> Green's *Short Hist.*, ch. I, § 4, p. 72; I Green's *Hist. of Eng. Peop.*, ch. 2, p. 64.

Venerable Bede, who amidst his duties at Jarrow always took delight in learning, teaching and writing, died in 755.<sup>83</sup> To his memory there is a tribute from Mr. Green,<sup>84</sup> which any lover of literature may be pleased to read. Alcuin, a native of York or its neighborhood, was by Egbert, archbishop of York,<sup>85</sup> appointed master of the great school in the archepiscopal city. His reputation attracted crowds of students from Gaul and Germany to his lectures and recommended him to the notice of the emperor Charlemagne.<sup>86</sup>

Ceolwulf, king of Northumbria (to whom Bede's history was dedicated) is mentioned as a prince of no small learning and an encourager of learned men. In 737 he resigned his kingdom to Eadbert and became a monk at Lindisfarne, in Northumberland, where he died in 740.<sup>87</sup>

*12. In the eighth century, the plan of exterminating the Welsh abandoned, and they allowed to dwell undisturbed among the conquerors. Of the code of Mercian law which bears Offa's name; and his correspondence with Charlemagne. At the close of the century the land possessed by Englishmen remained divided between Northumbria, Mercia and Wessex.*

Northumbria's king (Eadberht) "in 740, threw back Æthelbald's attack in a repulse which not only ruined the Mercian ruler's hopes of northern conquest, but loosened his hold on the south. Goaded to revolt by exactions, the West-Saxons, after twelve years of continued outbreaks, mustered at Burford,<sup>88</sup> in 753, and in a desperate fight gained a decisive victory, which freed Wessex from the Mercian

<sup>83</sup> So stated at the end of Bede's Eccl. Hist. in ch. 24, p. 340 of edi. 1840; Henry of Huntingdon, book 4, p. 124 (with Forester's note) and p. 126. The year which was misprinted 755 on p. 73 of Green's Short Hist., p. 73 of N. Y. edi. 1876, is correctly printed 735 in 1 Hist. of Engl. Peop., p. 67.

<sup>84</sup> Id. p. 64 to 67.

<sup>85</sup> Egbercht was ordained archbishop in 735 and died in 766. So stated at

the end of Bede's Eccl. Hist., ch. 24, pp. 340, 342 of edi. 1840.

<sup>86</sup> Alcuin accepted Charlemagne's invitation to reside in his court, and diffused a taste for learning through the empire. 1 Lingard's Engl., ch. 3, p. 114 of Boston edi. 1853.

<sup>87</sup> See end of Bede's Eccl. Hist., p. 340 and pp. 345, 346, notes 1 and 6, edi. 1840.

<sup>88</sup> In Oxford county. Burford is 18 miles from Oxford and 71 from London.

yoke. Four years later, in 757, its freedom was maintained in a new victory at Secandun; when Æthelbald, refusing to fly, fell fighting on the field.<sup>89</sup>

Under Offa, whose reign was long, Mercian power rose again.

"Beating back the Welsh from Hereford, and carrying back his own ravages into the heart of Wales, Offa, in 779, drove the king of Powys from his capital, which changed its old name of Pengwern for the significant English title of the Town in the Scrub, or Bush, Scrobbs byryg, Shrewsbury."—"Offa resolved to create a military border by planting a settlement of Englishmen between the Severn, which had till then served as the western boundary of the English race, and the huge 'Offa's Dyke' which he drew from the mouth of Wye to that of Dee. Here, as in the later conquests of the West-Saxons, the old plan of extermination was definitely abandoned, and the Welsh who chose to remain, dwelt undisturbed among their English conquerors."<sup>90</sup>

"It was to regulate the mutual relations of the two races that Offa drew up a code of Mercian laws which bore his name."

He was distinguished above most of the Anglo-Saxon kings by intercourse with the continent, and especially by correspondence with Charlemagne;<sup>91</sup> it is said, concerning a matter as to which Alcuin (or Alcwine) the Northumbrian scholar (whose learning had secured him Charles's confidence and friendship) endeavoured to avert war.<sup>92</sup>

"It was not till Wessex was again weakened by fresh anarchy that" Offa "was able to seize East Anglia and restore his realm to its old bounds under Wulfhere. Further he could not go. A Kentish revolt occupied him till his death in 796."<sup>93</sup>

Between Northumbria, Mercia and Wessex, "a threefold division seemed to have stamped itself upon the land," at the close of the

<sup>89</sup> Bede's *Eccl. Hist.*, pp. 340, 341 of edi. 1840; 1 Green's *Short Hist.*, ch. 1, § 4, p. 71, 72 and pp. 74, 75; 1 Green's *Hist. of Engl. Peop.*, ch. 2, pp. 68, 69.

<sup>90</sup> *Id.* ch. 2, pp. 68, 69.

<sup>91</sup> Turner's *Anglo-Saxons*, book 3, ch. 10, p. 346 and pp. 353, 354, 355 of vol. I. 1 Lingard's *Engl.*, ch. 3, p. 120 and p. 122 of edi. 1853.

<sup>92</sup> Green's *Short Hist.*, ch. 1, § 4, p. 76. Mr. Green speaks of the treaty between

Charles and Offa "as the first monument of our foreign diplomacy which secured protection for the English merchants and pilgrims who were making their way in growing numbers to Rome." *Ibid.*

<sup>93</sup> Green's *Hist. of Eng. Peop.*, ch. 2, p. 69. "Egfert, the son of Offa became king of Mercia, but he died 141 days afterwards and was succeeded by King Kenulf" (or Kenwulf or Cenwulf). Henry of Huntingdon, book 4, p. 139.

eighth century."<sup>94</sup> Then Eardulf was king of Northumbria; and Kenulf (or Kenwulf, or Cenwulf) king of Mercia. Bertric, the successor of Cynewulf in the kingdom of Wessex, had, in 787, taken to wife Eadbarga, daughter of Offa.<sup>95</sup>

13. *In the early part of the ninth century, Egbert, king of Wessex, reigned 37 years and 6 months, and became pre-eminent; perhaps "paramount monarch of all Britain." Of his character. The state of jurisprudence on the continent under his contemporaries Charlemagne and Louis le Debonnaire.*

Egbert (or Ecgberht), a descendant of Ina's brother, had, in the time of Bertric (or Brightric) and when Offa was alive, claim to the crown of Wessex. Henry of Huntingdon says:

"In his youth he had been driven into banishment by King Bertric, his predecessor, and Offa, king of Mercia, and spent two years of exile in the court of the Franks."

It was from Bertric (or Brightric) that Egbert apprehended the danger which caused him, after fleeing first to Offa, to leave Offa for the court of Charlemagne, "by whom Egbert was admitted to familiar intimacy, and entrusted with important employments." It may be inferred that his asylum with the Frankish sovereign was instrumental in extending Egbert's information, increasing his activity, enlarging his mind and educating him in the arts and duties of government. Upon Brightric's death, Egbert, the only descendant of Cerdic in existence, returned from France to Wessex, and was welcomed as king by the people of this his native land. In the cultivation of peace, and to their improvement, he employed a considerable portion of his reign; but part of it was occupied in war.<sup>96</sup>

After other marches "Ecgberht crossed the Thames in 827, and the realm of Penda and Offa bowed without a struggle to its conqueror. But Ecgbert had wider aims than those of supremacy over Mercia alone;" and they "drew him to the north."

<sup>94</sup>Green's Hist. of Eng. Peop., ch. 2, p. 69.

<sup>95</sup>Henry of Huntingdon, book 4, pp. 138, 139.

<sup>96</sup>Henry of Huntingdon, book 4, p.

140 to 142 of edi. 1853; Turner's Anglo Saxons, book 3, ch. 11, p. 362 to 365 of vol. I. edi. 1852; 1 Lingard's Engl., ch. 3, p. 113 and p. 143 of edi. 1853.



The presence of such freebooters as in 794 plundered the monasteries of Jarrow and Holy Island, told on the political balance of the English nation. Northumbria despaired "of finding in itself the union needed to meet the Northmen."—"Its thegns met Egbert in Derbyshire, and owned the supremacy of Wessex."—"The whole English race was for the first time knit together under a single rule;"<sup>97</sup> Egbert, king of Wessex, was now pre-eminent; and it may be was in some sense "paramount monarch of all Britain."<sup>98</sup>

Egbert fought at Charmouth against the invading Northmen, now called Danes; and the next year at Hengest-dun defeated combined forces of Danes and of Cornish Britons. After reigning over Wessex 37 years and 6 months, he died the year after this victory,<sup>99</sup> or within two or three years after it.<sup>100</sup>

Egbert is spoken of as "the most distinguished and successful king of all the Anglo-Saxon race before Alfred."<sup>101</sup> Mr. Turner observes:

"From Hengist to Egbert, talents were never wanting on some of the Anglo-Saxon thrones. The direction of the royal capacity varied; in some kings valour, in others military conduct, in some piety, in some learning, in some legislative wisdom predominated. The result was that the Anglo-Saxons, though fluctuating in the prosperity of their several districts, yet, considered as a nation, went on rapidly improving in civilization and power."<sup>102</sup>

Charlemagne, who in 788 caused the Theodosian code to be transcribed from the abridgment of it in the edition of Alaric, king of the Visigoths, was in 814 succeeded by his son, Louis le Debonnaire; Eg-

<sup>97</sup> Henry of Huntingdon, book 4, pp. 142, 143 of edi. 1853; Green's Short Hist., ch. 1, § 4, p. 77; 1 Green's Hist. of Engl. Peop., ch. 3, pp. 71, 72.

<sup>98</sup> Henry of Huntingdon, book 4, p. 143. Whether he was *paramount* is questioned in 2 Hall. Mid. Ages, pp. 349-354 of 10th Engl. edi. As to the style "king of England, or the king of the English," there may be reference to 1 Freem. Norm. Conq. Appendix M, p. 395 to 397 edi. 1873.

<sup>99</sup> Henry of Huntingdon, book 4, p. 140 to 143; 1 Turner's Anglo-Saxons, book 3, ch. II, pp. 369, 370 of vol. I,

edi. 1852; Green's Short Hist., ch. 1, § 5, p. 77; 1 Green's Hist. of Engl. Peop., ch. 3, p. 72.

<sup>100</sup> 836 is mentioned as the year of Egbert's death both by Mr. Turner (Id. p. 370) and Dr. Lingard; but the latter has a note that he died in 838 according to a charter of Ethelwulf dated *anno ab incarnatione Christi DCCCXXXVIII*. See Lingard's Engl., ch. 3, p. 146 of vol. I, edi. 1853.

<sup>101</sup> Turner's Anglo-Saxons, book 3, ch. II, p. 362 of vol. I, edi. 1852.

<sup>102</sup> Id. book 3, ch. 9, p. 339.

bert lived about twenty-four years afterwards. In the history of jurisprudence it was an interesting period when on the continent, according to M. Savigny,<sup>103</sup> notwithstanding German conquests, the former inhabitants of provinces preserved their Roman law.

"The Roman and his German conqueror resided in the same city or place, each under his own laws. It often happened, said Bishop Agobard, in his letter to Louis le Debonnaire, that five men, each under a different law, might be found walking or sitting together. At first only two laws were admitted: the law of the victors, which was properly a territorial law, and the law of the vanquished provincials, which was personal. In process of time, the laws of other German races conquered by the Franks were acknowledged along with the laws of the victor and of the vanquished Romans."<sup>104</sup>

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## CHAPTER III.

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### INSTITUTIONS OF ENGLAND FROM KING EGBERT'S DEATH (838) UNTIL THE DEATH OF ALFRED THE GREAT (901).

1. *Ethelwulf, king of Wessex from 838. Swithin, bishop of Winchester, his minister. Whether this saint 'celebrated for his pluvius propensity,' was chancellor under two sovereigns. Lord Campbell's view questionable.*

Alstan (or Helmstan, or Ealcstan) was bishop of Sherborne,<sup>1</sup> or of Winchester, in the latter part of the reign of Egbert and early part of that of Egbert's son Ethelwulf. Swithin of noble parentage put on the monastic habit in the old monastery at Winchester, passed his youth in the study of grammar, philosophy and the scriptures, and

<sup>103</sup> Hist. of Roman Law in Middle Ages, vol. I.

<sup>104</sup> 3 Kent's Com. 491, note b.; Hall. Mid. Ages, ch. 2, pp. 82, 83 of vol. I. Phila. edi. 1824.

<sup>1</sup> Ealestan is mentioned as bishop of

Sherborne in Henry of Huntingdon, book 4, p. 141 of edi. 1853, note 5. In a subsequent page he states that in 867 "died Bishop Elckstan, and he was buried at Sherborne, where he had been bishop 50 years." *Id.* book 5, p. 152.

was promoted to holy orders by that bishop.<sup>2</sup> Ethelwulf was educated in the earlier part of his life by the same bishop; marched in 823 with him into Kent,<sup>3</sup> and afterwards, by his recommendation, received from Swithin, a prior of the monastery at Winchester, instruction and the monastic habit.<sup>4</sup>

After his father's death, it seems there was a papal dispensation to release Ethelwulf from his sacerdotal engagement; he succeeded his father as king of Wessex, and at the death of the bishop of Winchester, in 852, granted that see to Swithin.<sup>6</sup> It may be that "Swithan, bishop of Winchester, became Æthelwulf's minister."<sup>7</sup> But one may hesitate about adopting Lord *Campbell's* view that St. Swithin 'celebrated for his *pluvius*<sup>8</sup> propensity' "held the office" of chancellor "under two sovereigns."<sup>9</sup>

<sup>2</sup> Perennial Calendar, London, 1824, p. 342, under date of July 15.

<sup>3</sup> Alstan, bishop of Sherborne, and Helmstan, bishop of Winchester, are mentioned in Turner's Hist. of Anglo-Saxons, book 4, ch. 4, pp. 414, 415 of vol. I, edi. 1852; and 1 Lingard's Engl., ch. 3, pp. 147, 148.

<sup>4</sup> Turner's Anglo-Saxons, pp. 414, 415 of vol. I, edi. 1852.

<sup>5</sup> *Id.*

<sup>6</sup> Turner in the history before referred to, after mentioning on one page (414) that Ethelwulf was educated by "Helmstan, the bishop of Winchester," and in 823 "marched with Alstan into Kent," has in the next (415) this statement: "Alstan, the bishop of Sherborne had possessed the favour of Egbert, and on his death became the political and military tutor of Ethelwulf; he was powerful, warlike and intelligent." In Henry of Huntingdon, book 5, p. 149, is a statement that in 850, or 851, "Elestan the venerable bishop," with others who are named, fought with the Danes and "gained a glorious victory." In the Perennial Calendar the statement before mentioned that "Swithin was promoted

to holy orders by Helmstan, bishop of Winchester," is followed by this: "At whose death in 852 King Ethelwulf granted him the see. In this he continued eleven years and died in 868" (perhaps meant to be printed 863).

<sup>7</sup> Green's Short Hist., ch. 1, § 5, p. 78.

<sup>8</sup> There has been, to some extent, "a belief that if it rains on the 15th of July, Saint Swithin's day, it will continue to rain for forty days. Observation has proved that the 15th of July may be rainy and that a dry time may follow;" but it is observed in England that "in a majority of summers a rainy period does come on or about the time when, according to tradition the bones of the saint, who was a bishop of Winchester a thousand years ago, were attempted to be moved from the burying ground where, agreeably to his wish, 'the drops of rain might wet his grave,' to be placed within the walls of a church, and when a violent rain for forty days prevented the intention of the bishop's monks being completed." Penny Magazine for 1839, p. 252.

<sup>9</sup> 1 Lives of the Chancellors, ch. 1, p. 31 of edi. 1846.

2. *Of Ethelwulf until his death in 857; and of his sons until 866; especially the incidents of Alfred's early years.*

Ethelwulf, by his wife Eadburga, had four sons,<sup>10</sup> of whom Alfred, or as he is sometimes called, Ælfred, was the youngest. It is stated that he was born in 849, about 60 miles from London, at what is now known as Wantage, in Berkshire;<sup>11</sup> that Ethelwulf, in 853, sent Alfred "to Rome with a great train," and caused him to be "anointed king;" and in 855 "went to Rome himself" and took "Alfred with him."<sup>12</sup> It may be inferred that Osberga had previously died. For Ethelwulf, on his way through France, in July, sought Judith, daughter of Charles the Bald, and on his return, in October, was married to her.

After getting home Ethelwulf submitted to a proposition for a division of territory with his son Ethelbald, and lived but two years longer.<sup>13</sup> The cares of government now devolved on Ethelbald and his brother Ethelbert; to his other cares Ethelbald added his father's young widow. Against his taking her for his consort the bishop of Winchester remonstrated, and the people expressed disapprobation; and Ethelbald consented to separate from her.<sup>14</sup>

Until Ethelbald's death (860) his brother, Ethelbert, seemed content with that share of the kingdom prescribed by his father's will; but afterwards he advanced a claim—to the crown of Wessex—which its council admitted. Though he left children, the crown passed on his death<sup>15</sup> (865, 6) to his brother, Ethelred.

<sup>10</sup>The three older than Alfred were Ethelbald, Ethelbert and Ethelred.

<sup>11</sup>8 Dugdale's Engl. and Wales, p. 1511; 1 Lingard's Engl., ch. 4, p. 161; Pinnock's Guide to Knowledge (1835) p. 97; Turner's Anglo-Saxons, vol. I, book 4, ch. 5, p. 430 to 433; and vol. II, book 5, ch. 1, p. 3, ch. 5, p. 117. So recently as Octo. 25, 1849, there was at Wantage a large gathering of people from different parts of the realm to celebrate Alfred's birth. 1 Milner's Gallery of Geography, 205.

<sup>12</sup>Id. vol. I, book 4, ch. 4, p. 414 to 416, pp. 422, 423, and ch. 5, p. 429; 1

Lingard's Engl., ch. 3, p. 151; Pinnock's Guide to Knowledge, 1835, p. 97.

<sup>13</sup>He was buried at Winchester, Id. p. 152; 1 Turner's Anglo-Saxons, book 4, ch. 5, pp. 426, 427.

<sup>14</sup>Judith returned to her father's court and married Baldwin, great forester of France (surnamed the Arm of Iron). They lived in great magnificence in Flanders, the earldom of which was bestowed on them by the king, Id; 1 Lingard's Engl., ch. 3, p. 153.

<sup>15</sup>Id. pp. 152, 153, 154; Turner's Anglo-Saxons, pp. 426, 427, 428. He was buried in Shireburn. Id. 428.

Alfred's "brothers had reached manhood without having been taught letters by their father; he, though he had an ecclesiastical education, left both them and Alfred illiterate"<sup>16</sup> Alfred was passing into youth without having learned to read, when "that passion for learning by which he was so honorably distinguished from his contemporaries," is said to have been awakened by his mother, or his step-mother. One may not readily concur with Dr. Lingard<sup>17</sup> in ascribing to Osberga the merit on this occasion; even as to Judith there may be difficulty, from the consideration that Alfred may not have attained the age of twelve before she was separated from Ethelbald and returned to France. However, the incident—for which page 16 of Alfred's life by Asser (bishop of Sherborne) is cited both by Lingard and Turner—is stated by Turner thus:

"When Alfred was twelve years old, she was sitting one day surrounded by her family, with a manuscript of Saxon poetry in her hands."<sup>18</sup>—"With a happy judgment she proposed it as a gift to him who would the soonest learn to read it. The whole incident may have been chance play, but it was fruitful of consequences. The elder princes, one then a king, the others in mature youth, or manhood, thought the reward inadequate to the task and were silent. But the mind of Alfred, captivated by the prospect of information, and pleased with the beautiful decoration of the first letter of the writing, inquired if she actually intended to give it to that one of her step-children as would the soonest learn to understand and repeat it. The queen repeating the promise with a smile of joy at the question, he took the book, found out an instructor and learned to read it. When his industry had crowned his wishes with success, he recited it to her."<sup>19</sup>

Although when Alfred was of the most proper age, and had the time to learn, it was difficult to obtain instructors,<sup>20</sup> yet official duties were devolved upon him at a comparatively early period.<sup>21</sup>

<sup>16</sup> Turner's *Anglo-Saxons*, vol. I, book 4, ch. 5, p. 430 to 433; and vol. II, book 5, ch. 1, p. 3, ch. 5, p. 117.

<sup>17</sup> I Lingard's *Engl.*, ch. 4, pp. 161, 162.

<sup>18</sup> "As Aldhelm and Cedmon had written poems of great popularity it may have contained some of them." Turner's *Anglo-Saxons*, vol. I, book 4, ch. 5, pp. 431, 432.

<sup>19</sup> Id. p. 432. Mr. Turner adds: "To

this important, though seemingly trivial incident, we owe all the intellectual cultivation and all the literary works of Alfred; and all the benefit which, by these, he imparted to his countrymen." Id. and 433.

<sup>20</sup> Id. pp. 433, 434; also vol. II, book 5, ch. 1, p. 9.

<sup>21</sup> Dr. Lingard states that "during the reigns of his brothers," Alfred possessed

3. *Of Alfred's surviving brother, and of Alfred himself from 867 to 871.*

Mr. Turner, writing of the year 867, says: "Alfred had now reached his nineteenth year; he was raised by his brother to an inferior participation of the regal dignity, and he married Ealswitha, the daughter of a Mercian nobleman."<sup>22</sup> He was exceedingly energetic, in 868, when acting with his brother, he joined the Mercian king; and about two years afterwards.<sup>23</sup> It was in the winter of 870-71 that the Danish leaders who had invaded East Anglia put to death its under-king, Eadmund or Edmund, over whose remains rose the stately abbey of St. Edmund's bury.<sup>24</sup>

In the early part of 871 King Ethelred, with his brother Alfred, arrived at Reading,<sup>25</sup> and gave battle to an army of Danes. Four days afterwards they fought the whole army assembled at Ashdown. Fourteen days afterwards they engaged the enemy at Basing (or Old Basing).<sup>26</sup> And in two months they fought a battle at Merton<sup>27</sup> (or Morton),<sup>28</sup> in which Heahmund, bishop of Sherborne, fell, and King Ethelred received a wound of which he died soon after Easter.<sup>29</sup> Mr.

the government of a petty district with the title of king." Lingard's Engl., ch. 4, p. 163 of vol. 1.

<sup>22</sup> Turner's Anglo-Saxons, book 4, ch. 6, p. 440 of vol. I. Dr. Lingard says: "The lady, whom he honoured with his choice was Alswitha, the daughter of Ethelred, a Mercian ealdorman, and of Eadburga, a princess of the race of Penda." 1 Lingard's Engl., ch. 4, p. 161. Alfred's daughter Alfritha became the wife of Baldwin, count of Flanders, son of the celebrated Judith. Id. p. 187.

<sup>23</sup> Turner's Anglo-Saxons, book 4, ch. 6, p. 440 to 456.

<sup>24</sup> Henry of Huntingdon, book 5, p. 152; 2 Dugdale's Engl. and Wales, p. 322; Green's Short Hist., ch. 1, § 5, p. 79. Soon after Edmund's death, the great abbeys of "Peterborough, Crowland, Ely went up in flames and their monks fled or were slain among the

ruins." Id.; 1 Green's Hist. of Engl. Peop., ch. 3, p. 73.

<sup>25</sup> In Berks county. Reading is 13 miles from Maidenhead, 17 from Newbury, 28 from Oxford, and 39 from London.

<sup>26</sup> In Hants county. Basing is 2 miles from Basingstoke, 5 from Odiham, 12 from Alton, and 44 from London. The bloody battle at Basing is mentioned in 1 Dugdale's Eng. and Wales, p. 102.

<sup>27</sup> That they fought a battle with this same army at Merton is stated in Henry of Huntingdon, book 5, p. 153. Merton in Oxford county is 9 miles from Oxford and 55 from London.

<sup>28</sup> The "opinion that it was Morton in Berks" is ventured in Turner's Anglo-Saxons, book 4, ch. 6, p. 457 of vol. I, edi. 1852.

<sup>29</sup> He was buried at Wimburn Minster. Henry of Huntingdon, book 5, p. 153;

Turner's opinion as to the place of this battle, that it was Morton, in Berks, is "because the chronicle of Mailros, 144, places the battle at Reading; and according to the map Morton hundred joins Reading and contains both North Merton and South Merton."<sup>30</sup> Against this is the fact that the battle of Reading preceded that at Basing; and Basing being farther from London than Reading is, it would seem that the armies were moving in a direction farther from London.

4. *Upon the death of his surviving brother, Alfred was chosen king of Wessex. His life was for many years of severe military labour, of continual difficulty and of great mental anxiety. His course until the peace of Wedmore, in 878.*

Upon Ethelred's death, Alfred was chosen king of Wessex by the *ducibus et presulibus* of the nation.<sup>31</sup> The life before him was of severe military labour, of continual difficulty and of great mental anxiety. In 877, or early in 878, Alfred was a fugitive, and preserved his life by concealment.<sup>32</sup>

"He experienced one of those sudden and total eclipses of fortune which bestow a poetical lustre on heroism and put genius to the test by reducing it to its own resources alone."<sup>33</sup>

Before the end of that year, 878, his talents had planned, and his energy accomplished, a great achievement.

"It was the triumph of mind over barbarian strength: of a wisely conceiving and arranging intelligence over superiority of number, elation from past successes and a hardihood of personal valour which no competition could excell."<sup>34</sup>

From a fort which he had raised hastily in the isle of Athelney he marched through Wiltshire, found the Danish host at Edington,

Turner's Anglo Saxons, book 4, ch. 6, p. 457 of vol. I, edi. 1852; 1 Lingard's Engl., ch. 3, p. 160. Wimborne Minster, a place of great antiquity, is in Dorset county, and distant 6 miles from Poole, 9 miles from Blandford, 10 from Cranborne, and 100 from London.

<sup>30</sup> Hist. of Anglo-Saxons, book 4, ch. 6, p. 457 of vol. I, edi. 1852.

<sup>31</sup> Turner's Anglo-Saxons, book 4, ch. 7, pp. 458, 459 of vol. I, book 8, ch. 1, p. 131 of vol. III.

<sup>32</sup> Id. book 4, ch. 7, pp. 465, 466, 467.

<sup>33</sup> 1 Mackintosh's Engl., ch. 2, pp. 42, 43 of Phila. edi. 1830.

<sup>34</sup> Turner's Anglo-Saxons, book 4, ch. 10, p. 483, p. 492 of vol. I. edi. 1852; 1 Lingard's Engl., ch. 4, p. 171.

defeated it in a great battle, and after a siege of fourteen days forced them to surrender and to bind themselves by a solemn peace at Wedmore in Somerset.<sup>35</sup>

5. *Good government of the realm. To what it was owing: Alfred considered his life but as a trust to be used for the benefit of his people; his mind was active and practical; he was a man of business and an economist of time.*

Alfred's military efforts were in performance of what he deemed necessary duties; but were uncongenial with his heart and mind. These turned, so soon as he was at liberty to pursue his natural bias, to nobler objects.<sup>36</sup>

"The peace of Wedmore at once marked the temper of the man. Ardent warrior as he was, with a disorganized England before him, he set aside at thirty-one the dreams of conquest to leave behind him the memory, not of victories, but of 'good works,' of daily toils, by which he secured peace, good government, education for his people."<sup>37</sup> "He seems to have considered his life but as a trust to be used for" their benefit.<sup>38</sup>

Having provided for the defence of his realm, he devoted himself to its good government. When a long peace was interrupted in 893 by a sudden invasion of Hastings, the invaders were made to feel the effects of sagacity and discretion, activity and courage.<sup>39</sup>

"Much of the success of" Alfred's "actual administration was due, no doubt, to his choice of instruments. He had a keen eye for men."—"But the secret of his good government lay mainly in the

<sup>35</sup> Green's Short Hist., ch. 1, § 5, p. 80;

1 Green's Hist. of Engl. Peop., ch. 3, p.

74. Wedmore is 130 miles from London.

<sup>36</sup> Turner's Anglo-Saxons, vol. II, book 5, ch. 6, p. 121.

<sup>37</sup> Green's Short Hist., ch. 1, § 5, pp. 80, 81.

<sup>38</sup> Turner's Anglo-Saxons, vol. II, book 5, ch. 6, p. 121; vol. I, book 4, ch. 11, p. 496.

<sup>39</sup> Turner's Anglo-Saxons, book 4, ch. 11, p. 501 *et seq.* of ed. 1852. They seem in 894 to have contemplated quit-

ting the island, but afterwards were employed in new aggressions. The spirit of Hastings began to bend in 896 and his formidable attempt terminated in 897. *Id.* Mr. Turner observes that "the defence of England against Hastings was a greater evidence of Alfred's military talents than his triumph over the armies which had harassed the first part of his reign." *Id.* ch. 4, p. 516; 1 Green's Hist. of Eng. Peop., book 1, ch. 3, pp. 81, 82.



intense energy of Alfred himself.”—“His activity was the activity of a mind strictly practical.”<sup>40</sup>—He “was an exact economist of his time, without which indeed nothing good can be achieved.”<sup>41</sup>

“He had ‘versatility and ingenuity;’ but it ‘was controlled by a cool good sense. Alfred was a thorough man of business. He was careful of detail, laborious, methodical. He carried in his bosom a little hand-book in which he noted things as they struck him.”—“Each hour of the day had its appointed task; there was the same order in the division of his revenue and in the arrangement of his court.”<sup>42</sup>

“The burnt and wasted country saw its towns built again, forts erected in positions of danger, new abbeys founded, the machinery of justice and government restored, the laws codified and amended.”<sup>43</sup>

6. *Of Alfred as a legislator; his code of laws and other measures. Of the king's participation in judicature; his separating the judicial from the executing department of the law; and improving the administration of law and justice. How he protected the independence, the purity and the rights of jurymen.*

In an ancient law-book it is said “that Alfred caused the earls to meet for the state of the kingdom, and ordained for a perpetual usage that twice in the year, or oftener if need were, during peace, they should assemble together at London to speak their minds for the guiding of the people; how to keep from offences; live in quiet, and have right done them by ascertained usages and sound judgment.”<sup>44</sup>

With the concurrence of his witenagemot, or parliament, Alfred made a code of laws, which has been called his Dom boc.<sup>45</sup> On

<sup>40</sup> Green's Short Hist., ch. I, § 5, pp. 81, 82.

<sup>41</sup> Turner's Anglo-Saxons, vol. II, book 5, ch. 5, p. 108, and ch. 6, pp. 132, 133.

<sup>42</sup> Green's Short Hist., ch. I, § 5, pp. 81, 82; 1 Green's Hist. of Engl. Peop., ch. 3, p. 77.

<sup>43</sup> Id. p. 79.

<sup>44</sup> Mirror, ch. I, § 2, cited in Turner's Hist. of Anglo-Saxons, book 8, ch. 5, pp. 186, 187 of vol. 3.

<sup>45</sup> Wilkins's Leg. Sax., pp. 28-46; Preface to 3 Rep., p. 19. “In this, for the first time, he introduced into the Anglo-Saxon legislation not only the decalogue,

but also the principal provisions of the Mosaic legislation, contained in the three chapters which follow the decalogue, with such modifications as were necessary to adapt them to the Anglo-Saxon manners. In the laws attached to them, he mentions that, with the concurrence of his witenagemot, he had collected together and committed to writing the regulations which his ancestors had established; selected such of them as he approved and rejected the rest. He adds, that he had shewed them to all his witenagemot, who declared that it pleased them all that these should be observed.

regaining his throne, and with that the kingdom of Mercia, he had taken means to prevent the Anglo-Saxons from infesting each other with predatory depredations, and also to provide an efficient force to repress the Danes. Those means are by some stated to have been a modification of the ancient provincial divisions of England, known as shires,<sup>46</sup> whereby they were divided into hundreds, and these into ten parts or tythings;<sup>47</sup> and whereby under these divisions the population of the country was arranged, every person being directed to belong to some hundred or tithing.<sup>48</sup>

The concluding chapter of Asser's life of Alfred<sup>49</sup> gives important data, not only as to the participation of the king in judicature, but as to the composition of the local courts in his time. The provincial prefects who in Alfred's time were only sheriffs, were divided by him into two officers, judges and sheriffs; whereby he separated the *judicial* from the *executing* department of the law, and provided an improved administration of law and justice.<sup>50</sup> He made his public officers exert themselves for the benefit of all his kingdom, and was inflexible in exacting from all a competence for their offices, compelling them to learn to read and write, and to study literature.<sup>51</sup>

To procure for his people the blessing of a correct and able administration of justice, he gave both the precept and the example. However burdensome the appeals from others to the king's judgment, he

Forty heads of laws then follow on the most important subjects of the Anglo-Saxon jurisprudence and legislation, obviously tending to increase the national civilization." Turner's Hist. of Anglo-Saxons, book 5, ch. 6, p. 128 of vol. II, edi. 1852; Green's Short. Hist., ch. 1, § 5, p. 81.

<sup>46</sup> Lord Coke states that "this realm was divided into shires and counties, and those shires into cities, boroughs and towns, by the Brittons; so that King Alfred's division of shires and counties was but a renovation or more exact description of the same." Co. Lit., 168 a; 2 Inst. 71.

<sup>47</sup> Gilb. C. P., p. 2, of Introd. to 3d edi. (Dublin, 1792); 1 Hume's Eng., ch.

2, pp. 71, 72; Id. appendix 1, p. 164; 1 Bl. Com., 114, 116; 1 Stubbs's Const. Hist., pp. 85, 86; also pp. 95, 96, and p. 99. As to the names of hundreds and other places in Saxon times, see ch. 5 of appendix 4, to Turner's Hist. of Anglo-Saxons, vol. 2, edi. 1852, p. 496, *et seq.*

<sup>48</sup> Mr. Turner states how far the hundred and tithing were pledged, the consequences of the arrangement, and the objections to it. Id. book 5, ch. 6, pp. 128, 129, 130.

<sup>49</sup> M. H. B. p. 497, cited in 1 Stubbs's Const. Hist., ch. 7, p. 183, note 3.

<sup>50</sup> Turner's Hist. of Anglo-Saxons, book 5, ch. 6, pp. 129, 130, of vol. 3.

<sup>51</sup> Id. p. 124.

sacrificed his own comfort for the welfare of his subjects. With great discernment and wonderful patience he examined the disputes. When he saw that the judges had erred, he called them mildly to him and either personally or by confidential persons, enquired if they had erred from ignorance, or malevolence, or avarice. When he found that ignorance had produced a wrong decision, he rebuked the judges for accepting an office for which they were unqualified, and required them to improve themselves by study, or to abandon their offices.<sup>52</sup>

The Anglo-Saxons had juries,<sup>53</sup> and Alfred was assiduous in protecting the independence, the purity and the rights of jurymen. He punished capitally judges for deciding criminal cases by an arbitrary violation of the right of jury.<sup>54</sup>

7. *Whether in Alfred's reign there was a court of chancery.*

To the Mirror, c. 1, § 3, and also to c. 5, there is a reference in 4 Inst. 78; Lord Coke there citing what the Mirror saith, '*Le primer*

<sup>52</sup> Id. pp. 131, 132; Miroir des Justices, p. 296, edi. 1642; 1 Lingard's Engl., ch. 4, pp. 177, 178, Boston edi. 1853; 1 Stubbs's Const. Hist., ch. 7, p. 183, note 3.

<sup>53</sup> Turner's History of Anglo-Saxons, appendix 3, ch. 9, p. 464 of vol. 2. Andrew Horne, whose work written in Norman French, in the time of Edward the second, was printed in London, 1642, (and of which a translation appeared in 1646,) has been attacked in Hickes's *Dissertatio Epistolaris*, page 34 to 43, for making the institution of juries to be anterior to the Conquest; but Horne professes to have taken his facts from the court records; and the objections of Dr. Hickes are weakened by the consideration that Lord Coke and Spelman before, and Bishop Nicholson since, Hickes wrote, have maintained with others that the Anglo-Saxons had juries. Turner's Anglo-Saxons, book 5, ch. 6, p. 132 (of

vol. 2). See Cam. Brit., p. 109; preface to 3 Rep., p. xi; preface to 8 Rep., p. xii, xiii; and Bishop Nicholson's preface to Wilkins's *Leges Anglo-Saxonice*.

<sup>54</sup> "He hanged Cadwine, because he condemned Hachwy to death without the assent of all the jurors, in a case where he put himself upon the jury of twelve men, and because Cadwine removed three who wished to save him against the nine, for three others into whose jury this Hachwy did not put himself."—"He hanged Markes, because he adjudged During to death by twelve men not sworn."—"He hanged Freberne, because he adjudged Harpin to death when the jurors were in doubt about their verdict; for, when in doubt, we ought rather to save than condemn." Mirror, pp. 296-298, cited in Turner's Hist. of Anglo-Saxons, book 5, ch. 6, p. 132 (of vol. 2).

*constitutions ordenus per les viels roys, &c., eidein fuit que chescun est del chancery le roy brief remedial a son pleint sans difficultie.*

Thereupon Lord *Coke* says, "Hereby it appeareth that in the reign of King Alfred there was a court of chancery out of which writs remedial issued, which was not then instituted, but affirmed to be a court then in *esse*, and enacted that out of that court writs remedial should be granted without difficulty, which law continueth to this day."

In 2 Inst., 553, 554, "you read that in the time of King Alfred (who began to reign *anno domini* 872, and reigned twenty-nine years and six months) he gave a pardon to Wolston, and that it was enrolled in the court of chancery; which record Wolston vouched."

8. *Alfred's efforts to extend his own and his people's knowledge, and to improve English literature. Observations upon the vernacular literature growing up in and since the tenth century.*

The extent to which there was in himself, and generally among the people of Wessex, ignorance of learning, had been long lamented by Alfred. When king he exerted himself to lessen that ignorance. His predominant wish was the mental and moral improvement of his countrymen.<sup>55</sup>

"He invited to his court the most distinguished scholars of his own and of foreign countries. Plegmund and Weifroth, Ethelstan and Werwulf visited him from Mercia; John of old Saxony left the monastery of Corbie for an establishment at Ethilingey; Asser of St. David's was induced by valuable presents to reside with the king during six months in the year; and an honorable embassy to Hine-mar, archbishop of Rheims, returned with Grimbald, the celebrated provost of St. Omer. With their assistance Alfred began in his thirty-ninth year to apply to the study of Roman literature, and opened schools in different places for the instruction of his subjects. It was his will that the children of every freeman whose circumstances would allow it, should acquire the elementary arts of reading and writing; and that those who were designed for civil or ecclesiastical employments should moreover be instructed in the Latin."<sup>56</sup>

<sup>55</sup> Turner's *Anglo-Saxons*, book 5, ch. 1, p. 11, of vol. 2, ed. 1852; *Id.* book 5, ch. 6, pp. 121, 123, 125, 127, and pp. 134, 135, note 42.

<sup>56</sup> 1 Lingard's *Engl.* ch. 4, p. 179, of Boston ed., 1853.

Like this account from Lingard, and somewhat more in detail, is that of Mr. Turner.<sup>57</sup> He mentions Alfred's ascribing his acquisition of the Latin language, to Archbishop Plegmund and those other learned men,<sup>58</sup> one of whom was Grimbald,<sup>59</sup> and another, stated to have been "of talents and acquisitions much superior," and called by Mr. Turner 'Johannes Erigena, or John the Irishman,'<sup>60</sup> was no doubt the same person whom Dr. Lingard calls 'John of Old Saxony'<sup>61</sup> The

<sup>57</sup> Citing Asser, p. 16, Mr. Turner says of Alfred: "His first acquisitions were Werfrith, the bishop of Worcester, a man skilled in the Scriptures; Plegmund, a Mercian, who was made archbishop of Canterbury, a wise and venerable man; Ethelstan and Werwulf, also Mercians and priests. He invited them to his court and endowed them munificently with promotions; and by their incessant exertions the studious passion of Alfred was appeased. By day and by night, whenever he could create leisure to listen, they recited or interpreted to him the books he commanded; he was never without one of them near him, and by this indefatigable application, though he could not himself understand the learned languages as yet, he obtained" "information which disclosed to him the vast repositories of knowledge of which he was ignorant. The more he knew the more tuition he craved." Turner's *Anglo-Saxons*, book 5, ch. 1, pp. 11, 12, of vol. 2, edi. 1852.

<sup>58</sup> What Alfred had learned of Plegmund, his archbishop, and of Asser, his bishop, of Grimbald, his mass priest, and of John, his mass priest, is alluded to in the preface to Gregory's *Pastoral*, published by Wise at the end of his life of Asser, pp. 85, 86, and mentioned in Turner's *Anglo-Saxons*, book 5, ch. 1, of vol. 2, p. 18, edi. 1852.

<sup>59</sup> "The priest and monk who had treated him" (Asser) "kindly in his journeys, and who is described as a respected man, learned in the writings he

revered, adorned with every moral excellence, and skilled in vocal music." Id. p. 12. Alfred "sent an honorable embassy of bishops, presbyters, deacons and religious laymen to Fulco, the archbishop of Rheims, within whose district Grimbald resided. He accompanied his mission with munificent presents, and his petition was that Grimbald might be permitted to leave his functions in France and to reside in England. The ambassadors engaged for Alfred that Grimbald should be treated with distinguished honour during the rest of his life. The archbishop, in his letter to Alfred, speaks highly of the king's administration of his government, and commends the merit of Grimbald. Fulco adds that it was with great personal pain that he permitted him to be taken from France. The liberality of Alfred overcame his reluctance, and Grimbald became a king of Wessex." Id. p. 14.

<sup>60</sup> "A monk of most penetrating intellect, acquainted with all the treasures of literature, versed in many languages and accomplished in many other arts." Id. p. 12.

<sup>61</sup> In a note on p. 179 of 1 Lingard's *Engl.*, it is said: "John, abbot of Ethel- ingey, has been often confounded with Johannes Scotus Erigena. They were different persons. Scotus, as his name imports, was a native of Ireland; John, the abbot, was a native of old Saxony (Asser, 61.). Scotus was neither priest nor monk (Mabillon *Sac.* iv, tom. ii, p. 510.). John, the abbot, was both priest

third was Asser, of Wales, who became the interesting biographer who "translated and read to" Alfred "whatever books he wished which were within" "reach,"<sup>62</sup> and has noted the date (887) when Alfred obtained the happiness he had long coveted of reading the Latin authors in their original language, and has described its occurrence.<sup>63</sup>

He "often wondered 'that the illustrious scholars, who once flourished among the English, and who had read so many foreign works, never thought of transferring the most useful into their own language.' To supply the deficiency, Alfred himself undertook the task. Of his translations two were historical, and two didactic. The first were the ecclesiastical history of the English, by Bede, and the epitome of Orosius, the best abridgment of ancient history then extant"<sup>64</sup>

Alfred "was far more than a translator; he was an editor for the people. Here he omitted, there he expanded. He enriched Orosius by a sketch of the new geographical discoveries in the north. He gave a West-Saxon form to his selections from Bæda. In one place he stops to explain his theory of government, his wish for a thicker population, his conception of national welfare as consisting in a due balance of the priest, the soldier and the churl. The mention of Nero spurs him to an outbreak on the abuses of power."<sup>65</sup>

"Before him England possessed in her own tongue one great poem, that of Cædmon, and a train of ballads and battle-songs."—"It seems likely that the king's rendering of Bæda's history gave the first impulse toward the compilation of what is known as the English, or Anglo-Saxon Chronicle, which was certainly thrown into its present form during his reign."—"Varying as it does from age to age, in historic value, it remains the first vernacular history of any Teutonic people, and save for the Gothic translations of Ulfilas, the earliest and most venerable monument of Teutonic prose."<sup>66</sup>

Mr. *Stubbs* observes that "the vernacular literature which" Alfred

and monk (Asser 47-61; Ælfred's præf. ad. Past., p. 85.).

<sup>62</sup> Turner's Anglo-Saxons, book 5, ch. 1, p. 13, of vol. 2, edi. 1852.

<sup>63</sup> Id. p. 14.

<sup>64</sup> "Both works calculated to excite and gratify the curiosity of his subjects. Of the others one was meant for general reading, 'The Consolation of Philosophy' by Boetius, a treatise deservedly held in high estimation at that period; and the second was destined for the instruction of the clergy, the Pastoral of

Gregory the Great." Lingard's Engl., ch. 14, pp. 179, 180 of vol. I., Boston edi. 1852. As to Alfred's translations, see Turner's Anglo-Saxons, book 5, ch. 2, p. 20, *et seq.*, ch. 3, p. 67-74, ch. 4, p. 85 *et seq.* of vol. II, edi. 1852; and Turner's Engl., book 2, ch. 2, pp. 210, 211, edi. 1825.

<sup>65</sup> Green's Short Hist., ch. 1, § 5, p. 83; 1 Green's Engl. Peop., book 1, ch. 3, p. 80.

<sup>66</sup> *Id.* pp. 80, 81.

"had founded, flourished continuously;" that "the tenth century not only is the great age of the chroniclers, but abounds in legal and disciplinary enactments in the native tongue."<sup>67</sup> and that "since the time of Alfred a national literature has been growing up, of which the very fragments that have survived the revolution of conquest and many centuries of literary neglect, are greater than the native contemporaneous literature of any other people in Europe." In his opinion "no other nation possesses a body of history such as the Anglo-Saxon Bede and the Chronicles."<sup>68</sup>

*9. Of Alfred's general character; how he suffered in life; and when he died.*

Alfred's regard for truth was deep-seated. An author living at the period of the Norman conquest, and mentioning kings with short appropriate epithets, names Alfred with the simple but expressive addition of 'the truth teller.'<sup>69</sup> "The desire for knowledge, that in-born instinct of the truly great which no gratifications could satiate, no obstacles discourage, never left him but with life."<sup>70</sup> "The love of study," gradually bringing to his view the anterior ages of human history and all their immortalized characters, the spark of moral emulation kindled within him; he strove for virtues which he could not else have conceived; he aspired to the fame which only these will bestow; and became a model of wisdom and excellence himself for other generations to resemble."<sup>71</sup>

"Perhaps there is no example of any man who so happily combined the magnanimous with the mild virtues, who joined so much energy in war, with so remarkable a cultivation of the useful and beautiful arts of peace, and whose versatile faculties were so happily inserted in their due place and measure as to support and secure each other, and give solidity and strength to the whole character."

Sir James Mackintosh, after thus speaking of Alfred, uses language common to him with Marcus Aurelius:

<sup>67</sup> I Stubbs's Const. Hist., ch. 8, pp. 240, 241 and 242, 243.

<sup>68</sup> Id. ch. 7, p. 215.

<sup>69</sup> *Hermann's Miracula Edmundi script.*, 1070; cited in Turner's Anglo-

Saxons, book 5, ch. 5, p. 120 of vol. II, edi. 1852.

<sup>70</sup> Id. ch. 1, p. 9.

<sup>71</sup> Id. book 5, ch. 1, p. 7 and 10; also book 4, ch. 5, pp. 433, 434 of vol. I.

"Both furnish an useful example that study does not disqualify for administration in peace or for vigour in war, and that scrupulous virtue may be combined with vigorous policy. The lot of Alfred forbade him to rival the accomplishments of the imperial sage. But he was pious without superstition; his humbler knowledge was imparted with more simplicity; his virtue was more natural; he had the glory to be the deliverer as well as the father of his country; and he escaped the unhappiness of suffering his authority to be employed in religious persecution."<sup>72</sup>

It is not extraordinary that such a man as his kinsman, St. Neot, should have led Alfred's mind to favorable impressions of sincere religion."<sup>73</sup>—"But he was no mere saint. He felt none of that scorn of the world about him which drove" "souls of his day to monastery or hermitage."<sup>74</sup>

"Cynicism found no echo in the large and sympathetic temper of Ælfred. He not only longed for the love of his subjects, but for the remembrance of 'generations' to come. Nor did his inner gloom and anxiety check for an instant his vivid and versatile activity."<sup>75</sup>

"Of the narrowness, of the want of proportion, of the predominance of one quality over another, which goes commonly with an intensity of moral purpose, Ælfred showed not a trace. Scholar and soldier, artist and man of business, poet and saint, his character kept" a "perfect balance."<sup>76</sup> "But full and harmonious as his temper was, it was the temper of a king. Every power was bent to the work of rule. His practical energy found scope for itself in the material and administrative restoration of the wasted land. His intellectual activity breathed fresh life into education and literature. His capacity for inspiring trust and affection drew the hearts of Englishmen to a common centre and began the upbuilding of a new England. And all was guided, controlled, ennobled, by a single aim. 'So long as I have lived,' said the king, as life closed about him, 'I have striven to live worthily.' Little by little men came to know what such a life of worthiness meant. Little by little they came to recognize in Ælfred a ruler of higher and nobler stamp than the world had seen."—"If the sphere of his action seems too small to justify the comparison of him with the few whom the world owns as its greatest men, he rises to their level in the moral grandeur of his

<sup>72</sup> 1 Mackintosh's *Engl.*, ch. 2, pp. 47, 45, ed. 1830.

<sup>73</sup> Turner's *Anglo-Saxons*, book 5, ch. 5, pp. 117, 118, 119, of vol. II, ed. 1852. His mind was "formed to that admirable combination of great piety with great wisdom, enlarged intellect, liberal feeling, and as much knowledge as his in-

quisitive character could obtain." *Id.* p. 117.

<sup>74</sup> 1 Green's *Hist. of Engl. Peop.*, ch. 3, p. 75. <sup>75</sup> *Id.* p. 76.

<sup>76</sup> *Id.* p. 77. Mr. Green's words are, "That perfect balance which charms us in no other Englishman save Shakspeare." *Ibid.*



life. And it is this which has hallowed his memory among his own English people. 'I desire,' said the king, in some of his latest words, 'I desire, to leave to the men that come after me a remembrance of me in good works.' His aim has been more than fulfilled."—"The instinct of the people has clung to him with a singular affection. The love which he won a thousand years ago has lingered round his name from that day to this. While every other name of those earlier times has all but faded from the recollection of Englishmen, that of Ælfred remains familiar to every English child."<sup>77</sup>

What Alfred accomplished was done during a life which was literally a life of disease.<sup>78</sup> It may be repeated as "not among the least admirable circumstances of this extraordinary man, that he withstood the fiercest hostilities that ever distressed a nation, cultivated literature, discharged his public duties, and executed all his schemes for the improvement of his people, amid a perpetual agony, so distressing that it would have disabled a common man from the least exertion."<sup>79</sup>

Alfred died on the 26th day of October, in the year (according to the most probable computation) 901.<sup>80</sup> Of the transfer of his remains to the new minster at Winchester there is mention in the next chapter.<sup>81</sup>

<sup>77</sup> 1 Lingard's Engl., ch. 4, pp. 180, 181; 1 Green's Short Hist., ch. 1, § 5, p. 80; 1 Green's Hist. of Engl. Peop., ch. 3, pp. 77, 78.

<sup>78</sup> Turner's Anglo-Saxons, book 5, ch. 1, p. 9, and ch. 6, p. 133 of vol. II, edi. 1852.

<sup>79</sup> *Id.* pp. 133, 134.

<sup>80</sup> Turner's Anglo-Saxons, book 4, ch. 11, p. 517 of vol. I, edi. 1852; 1 Mackintosh's Engl., ch. 2, p. 45, of Philadelphia edi. 1830; Pinnock's Guide to Knowledge (for 1835) p. 100.

<sup>81</sup> At the end of the first section.

## CHAPTER IV.

## INSTITUTIONS OF ENGLAND FROM THE DEATH OF ALFRED THE GREAT (901) UNTIL THE NORMAN CONQUEST (1066).

1. *During the reign of Edward the elder, 901 to 924.*

Alfred was survived by several of his children.<sup>1</sup> His eldest son, Edward, received from him instructions which are noticed for their pathetic simplicity and political wisdom, and the proof which they afford of Alfred's anxiety for the welfare of his subjects.<sup>2</sup> Edward was chosen by the nobles as their king.<sup>3</sup> He had distinguished himself against Hastings; but warrior as he "had shown himself, he" inclined "to his father's policy of rest;<sup>4</sup> more, it seems, than some of his father's children did."<sup>5</sup> It may be that it was not till 910 that,

<sup>1</sup> Ethelfleda, Edward, Ethelgiva, Alfritha, and Ethelweard. Ethelfleda, the eldest, a woman of superior mind, became the wife of Ethered, the governor of Mercia. Edward and Alfritha were educated in the royal court with great attention. Alfritha married Baldwin the Bald (son of Baldwin with the Iron Arm, and of Judith, mentioned in ch. 3, § 2, p. 56); their offspring was Arnulf, from a descendant of whom was born Matilda, the wife of William, the Conqueror. Alfred's youngest son, Ethelweard, received a sort of public education; he was committed to the care of proper teachers, with almost all the noble children of the province, and with many of inferior ranks. They were all assiduously instructed in Latin and Saxon;

they learned also the art of writing. 1 Lingard's Engl., ch. 4, p. 153; Turner's Anglo-Saxons, book 5, ch. 5, of vol. II, pp. 103, 104, 105. Ethelweard, who became celebrated for his learning, lived 21 years after his father and died in 922, Id. p. 106.

<sup>2</sup> "Strive to be a father and a lord to thy people. Be thou the children's father and the widow's friend. Comfort thou the poor and shelter the weak; and with all thy might, right that which is wrong. And son, govern thyself by law." Id. p. 105.

<sup>3</sup> *A primatis electus.* Id. book 8, ch. 1, p. 131 of vol. III.

<sup>4</sup> 1 Green's Hist. of Engl. Peop., book 1, ch. 3, p. 82.

<sup>5</sup> Henry of Huntingdon, book 5, pp. 162, 163.

upon a fresh rising of the Northmen, Alfred's children girded themselves to the conquest of what, since the peace of Wedmore, (mentioned in ch. 3, § 4, p. 59) was called 'Danelagh.'<sup>6</sup>

"While Eadward bridled East Anglia, his sister, Æthelflæd, in whose hands Æthelred's death left English Mercia, attacked the 'Five Boroughs.'<sup>7</sup> "Each of these 'Five Boroughs' seems to have been ruled by its earl with his separate 'host;' within each twelve 'lawmen' administered Danish law, while a common justice-court existed for the whole confederacy."<sup>8</sup>

"The brilliancy of his sister's exploits had," for a time, "eclipsed those of the king, but" Eadward "was a vigorous and active ruler;" "on the death of Æthelflæd, in 918, he came boldly to the front."

"Annexing Mercia to Wessex, and thus gathering the whole strength of the kingdom into his single hand, he undertook the systematic reduction of the Danelagh;" and had made great progress "when, in 924, the whole of the north suddenly laid itself at his feet. Not merely Northumbria, but the Scots and the Britons of Strathclyde 'chose him to be father and lord.'"<sup>9</sup>

Edward died in 924, or 925. His eldest, though perhaps illegitimate, son, was Athelstan. Edward left by one marriage two sons, Ethelward and Edwin, and six daughters; and by another marriage two sons, Edmund and Edred, and three daughters. His sons received the best literary education of the day. Ethelward, the eldest of the sons by the first marriage, died in a few days after his father.<sup>10</sup>

<sup>6</sup>Id. p. 164 to 167; 1 Green's Hist. of Engl. Peop., ch. 3, p. 82. "Danelagh," as it was called, embraced Northumbria, East Anglia, and Central England, "east of a line which stretched from Thames' mouth along the Lea to Bedford, thence along the Ouse to Watling street and by Watling street to Chester." Id. p. 75. The Roman military road from Dover to Chester (a part of which still remains) was named by the Saxons Watling street. *Keightley's England*, vol. 1, p. 29, n.

<sup>7</sup>"Which had taken the place of the old Mercian kingdom. Derby represented the original Mercia on the upper Trent, Lincoln the Lindiswaras, Leices-

ter the Middle English, Stamford the province of the Gyrwas, Nottingham probably that of the Southumbrians."

<sup>8</sup>1 Green's Hist. of Engl. Peop., ch. 3, p. 82.

<sup>9</sup>Id. p. 82.

<sup>9</sup>Henry of Huntingdon, p. 164 to 168; 1 Lingard's Engl., ch. 4, pp. 193, 194; Turner's Anglo-Saxons, book 6, ch. 1, p. 148 of vol. II; 1 Green's Hist. of Engl. Peop., book 1, ch. 3, pp. 82, 83.

<sup>10</sup>Henry of Huntingdon, book 5, p. 169; Turner's Anglo-Saxons, book 6, ch. 1, pp. 149, 150 of vol. 2. To the new minster at Winchester—the most important of the religious foundations in Ed-

2. *The reign of Athelstan, 924 to 941. His course as a legislator. Whether he had a chancellor. Athelstan's character, influence and fame.*

Athelstan's mother, a shepherd's daughter of extraordinary beauty, is mentioned as the partner of Edward's throne, and as *regi consors*.<sup>11</sup> Athelstan was only six years of age when his grandfather died. Yet, interested by his beauty and manners, Alfred had thus early invested him with the dignity of knighthood and made him presents.<sup>12</sup> His aunt, Ethelfleda, and her husband, superintended his education, and Athelstan's attainments reflected honour on their attentions.<sup>13</sup> When thirty years of age (924 or 925) the sceptre passed to him; and he was crowned at Kingston.<sup>14</sup>

His predecessors, till Alfred's reign, had been styled kings of Wessex. That monarch and his son, Edward, assumed a more extensive title. Athelstan called himself sometimes king of the English, and at other times claimed the more pompous designation of king of all Britain. The king of Scots (in 934) sought to free himself from dependence on the English monarch, but Athelstan's power was irresistible.<sup>15</sup> A few years afterwards there was against him a formidable confederacy; but in 938, at Brunanburgh, in Northumbria, Athelstan, assisted by his brother Edmund, obtained a victory which confirmed his ascendancy.<sup>16</sup> After this battle "he was the immediate sovereign

ward's time—he had caused Alfred's remains to be transferred; and therein the remains of Alfred's son Edward and of his grandson Ethelward were deposited. *Id.* book 6, ch. 2, p. 151 of vol. 2; 1 Lingard's Engl. ch. 1, p. 195.

<sup>11</sup> Dr. Lingard thinks the inference that Athelstan was illegitimate is weakened by the testimony of a cotemporary poetess, who speaks of his mother as the partner of Edward's throne; from Roswitha *de gestis*, Odon p. 165, he cites the words *regi consors* as showing that she was the king's wife. 1 Lingard's Engl. ch. 4, pp. 195, 196, and *note*.

<sup>12</sup> Of a purple vestment, a jewelled belt and a Saxon sword with a golden sheath.

Turner's Anglo-Saxons, book 6, ch. 2, p. 151 of vol. 2.

<sup>13</sup> *Id.* The father's care that Athelstan should have 'a lettered education'; and 'a little catalogue of his books extant,' in Saxon characters in the Cotton Library, are noticed in *Id.* book 6, ch. 2, p. 176.

<sup>14</sup> By Athelin (successor of Plegmund), archbishop of Canterbury, *Id.* p. 151; 1 Lingard's Engl. ch. 4, p. 195.

<sup>15</sup> 1 Lingard's Engl. ch. 4, pp. 197–202.

<sup>16</sup> By the northmen he was distinguished with the appellation of 'the conqueror,' *Id.* p. 201. "His victory was celebrated in an Anglo-Saxon poem still extant, the earliest of the few metrical materials of

of all England; he was even nominal lord of Wales and Scotland.”<sup>17</sup>

“The British princes no longer disputed his authority; the chieftains of the East Anglian and Northumbrian Danes who, under a nominal vassalage, had so often maintained a real independence, entirely disappeared, and all the countries originally conquered and colonized by the different Saxon tribes, became united under the same crown.”<sup>18</sup>

“As a legislator,” Athelstan “was anxious to suppress offences, to secure an impartial administration of justice, and to preserve the standard coin of the realm in a state of purity. With this view he held assemblies of the Witan at Greatly, Faversham, Exeter and Thundersfield;<sup>19</sup> associations were formed under his auspices for the protection of property, and regulations were enacted respecting the apprehension, the trial, and the punishment of malefactors. Negligence in the execution of the laws was severely chastised.”<sup>20</sup>

Lord *Coke*, speaking of the kings who had chancellors, mentions ‘King Athelstane’ as having ‘Wolsine.’<sup>21</sup>

Beyond the British isle the fame of Athelstan’s talents, accomplishments and successes extended: he was regarded with respect by foreigners, had friendly correspondence with foreign courts, and his influence was felt upon the continent.<sup>22</sup> Princes destined to act important parts in Europe were by him educated and established.<sup>23</sup>

He is described as liberal and charitable;<sup>24</sup> Dr. Lingard gives no

English history.” 1 Mackintosh’s Engl. ch. 2, p. 52, of Phila. edi. 1830.

<sup>17</sup> Turner’s Anglo-Saxons, book 6, ch. 2, p. 161 to 163 of vol. II. Mr. Turner mentions that he “improved Exeter which he separated from the British kingdom of Cornwall.” Id. p. 176.

<sup>18</sup> 1 Lingard’s Engl., ch. 4, pp. 201, 202. It has been said that “to Athelstan belongs the glory of having established what has ever since been called the kingdom of England.” *Ibid.* But such does not appear to be Mr. Green’s view. Short Hist., ch. 1, § 6, pp. 85, 86; 1 Hist. of Engl. Peop., ch. 3, p. 84.

<sup>19</sup> 1 Lingard’s Engl., ch. 4, p. 206. By his laws “punishments were ordered to those who refused to attend gemots. Every man was to have peace in going to the gemot and returning from it, unless

he were a thief.” Turner’s Anglo-Saxons, vol. II, appendix No. 3, ch. 7, p. 458; citing Wilkins, p. 60 and p. 136.

<sup>20</sup> 1 Lingard’s Engl., ch. 4, p. 206. “A thane paid to the crown a fine of sixty shillings: a superior magistrate was amerced in double that sum, with the forfeiture of his office. Id. p. 206.

<sup>21</sup> 4 Inst. 78.

<sup>22</sup> 1 Lingard’s Engl., ch. 4, p. 202; Turner’s Anglo-Saxons, book 6, ch. 2, pp. 151, 152, p. 161 to 164, pp. 175, 176 of vol. II.

<sup>23</sup> 1 Lingard’s Engl., ch. 4, p. 202 to 204; Turner’s Anglo-Saxons, book 6, ch. 2, p. 164 to 174 of vol. 2, and appendix p. 179 to 190.

<sup>24</sup> 1 Lingard’s Engl., ch. 4, p. 206; Turner’s Anglo-Saxons, book 6, ch. 2, p. 176 to 178 of vol. II.

credit to the tale of his memory being 'stained with the murder of his brother' Edwin.<sup>25</sup> Turner (who speaks of this stain) regards Athelstan as 'a great and illustrious character—as amiable as great.'<sup>26</sup>

In the year 941 Athelstan died, regretted by his subjects and admired by surrounding nations.<sup>27</sup>

3. *Of Turketil who, under his cousins, was the king's chancellor or secretary; of the reigns, 1st, of Edmund the elder—941 to 946; 2nd, Edred—946 to 955; 3rd, Edwin—955 to 959. Whether Dunstan's office under Edred was like that of later chancellors. Censure of him and Archbishop Odo for their conduct to Edwin and his queen.*

Athelstan, leaving no children, was succeeded, not by a son, as Mr. Green seems to suppose,<sup>28</sup> but by the oldest of the two surviving brothers named in the last paragraph of § 1, p. 71,<sup>29</sup> to-wit: Edmund, then little if any over eighteen, but called Edmund the elder.<sup>30</sup> He was killed in 946, and left two sons, Edwy and Edgar, of whom the eldest was then not more than nine years of age.<sup>31</sup>

On account of their childhood they were passed by and their uncle Edred was chosen king. The measures of his reign spoken of by Lingard<sup>32</sup> and Turner,<sup>33</sup> are supposed to have been much influenced by the councils of two favorite ministers, one of whom was Turketil,

<sup>25</sup> 1 Lingard's Engl., ch. 4, pp. 198, 199.

<sup>26</sup> Turner's Anglo Saxons, book 4, ch. 2, pp. 177, 178 of vol. II.

<sup>27</sup> The abbey of Malmsbury, where he had deposited the remains of his cousins Ælfwin and Ethelwin (who fell at Branenburgh), was chosen by him as, and it became, the place of his sepulture. 1 Lingard's Engl., ch. 4, p. 205 to 207.

<sup>28</sup> 1 Green's Hist. of Engl. Peop., ch. 3, p. 84.

<sup>29</sup> Of the brothers there named by their father's first marriage, Ethelward died soon after his father; and Edwin was drowned at sea in 933. Henry of Huntingdon, book 5, note 4, p. 169 of Forester's edn. 1853.

<sup>30</sup> Turner's Anglo-Saxons, book 6, ch. 3, p. 191 to 195 of vol. II; 1 Lingard's Engl., ch. 4, pp. 208, 209.

<sup>31</sup> At Pucklekirk in Gloucestershire. Id. pp. 209, 210. When "this victorious king had reigned gloriously" "all things happening prosperously, he was traitorously stabbed on St. Augustine's day." Henry of Huntingdon, book 5, p. 172. May 26 is the day of "St. Augustine B. C. apostle of England;" August 28, of "St. Augustine, bishop and confessor, doctor of the church."

<sup>32</sup> 1 Lingard's Engl., ch. 4, p. 210 to 212.

<sup>33</sup> Turner's Anglo-Saxons, book 6, ch. 4, p. 198.

a clergyman of royal descent (eldest son of Ethelward and grandson of Alfred), who had the office of chancellor or secretary to the king, under more than one of his cousins; perhaps under Edward the elder and under Athelstan; certainly under Edmund and Edred.<sup>84</sup> The other favorite was Dunstan,<sup>85</sup> who having served during several years the church of Glastonbury, was by Turketil recommended to the favour of Edmund (by whom Glastonbury, with its possessions, was bestowed on him), and was chosen by Edred for his confidential friend and counsellor. To him the "king sent all his choicest treasures and those amassed by the preceding sovereigns, to be kept in his monastery under his inspection." In some respects his office "under Edred" may "have been very much like that of the later chancellors."<sup>86</sup>

As to some matters affecting Dunstan, the statements of Lingard<sup>87</sup> and Green<sup>88</sup> vary from those of two other historians. If the real state of facts be as supposed by these two (Hallam and Turner), then there is great force in their view, which is, in substance, as follows:

Upon Edred's death, in 955,<sup>89</sup> his nephew, Edwin (called often

<sup>84</sup> 4 Inst. 179; 1 Lingard's Engl., ch. 4, p. 212; 1 Campbell's Lives of the Chancellors, p. 31 to 33. The important part which he acted in the battle of Brunanburgh is noticed both by Lingard (ch. 4, p. 201) and Turner (book 6, ch. 2, p. 160). The former states that when he obtained (soon after 952) the king's permission to quit his office and retire to and restore the monastery of Croyland, there was in the king's new grant an exception from the privilege of sanctuary; Turketil refusing it 'as a violation of justice and an incentive to crime.' In discharging the duties of abbot he spent the remainder of his life; which ended in 975. 1 Lingard's Engl., ch. 4, p. 213. A different man is mentioned as Turketil in Turner's Anglo-Saxons, book 6, ch. 9, p. 272 of vol. II, and as Thurchil in 1 Lingard's Engl., ch. 5, p. 245. He is noticed *post.* in § 5 as a Danish commander.

<sup>85</sup> He was nearly related to Athelm, archbishop of Canterbury, and to Elphega, bishop of Winchester, and was introduced by them to the court of King Athelstan. 1 Lingard's Engl., ch. 4, p. 214.

<sup>86</sup> What is said in 1 Spence's Eq. Jur., p. 78 (n.) t. as to 'Turketil, Edward the elder's chancellor,' may be compared with the language in 1 Stubbs's Const. Hist., ch. 11, p. 352, note 1, as to "the office held by Dunstan under Edred."

<sup>87</sup> Vol. 1, ch. 4, p. 214 *et seq.*

<sup>88</sup> 1 Green's Short Hist., ch. 1, § 6, pp. 86, 87, 88; 1 Green's Hist. of Engl. Peop., ch. 3, p. 84 to 86, and ch. 4, pp. 95, 96.

<sup>89</sup> His constitution had been enfeebled by disease. He was buried at Winchester November 23, 955. Turner's Hist. of Anglo-Saxons, book 6, ch. 4, p. 198 of vol. II, edi. 1852.

Edwy and sometimes Eadwig), was by the unanimous voice of the witan chosen king; though not more than 16 or 17 years of age.<sup>40</sup> Having Elgiva (or Ethelgiva) for his wife, he had retired after the ceremony of the coronation, and was in company with her and her mother, when on his retirement there was intrusion; and for his rights as a man and his dignity as a sovereign a want of due regard by Odo (archbishop of Canterbury) and Dunstan. Whether the king's marriage was within the prohibited degrees of affinity or not—whether or no the woman was to be ranked as a mistress,<sup>41</sup> or might be divorced on the plea of kinship, or on any other ground, we may well adopt Mr. Hallam's opinion, that "upon the supposition least favorable to the king, the behaviour of Archbishop Odo and St. Dunstan was an intolerable outrage of spiritual tyranny"—that, "queen or no queen, wife or no wife, it was not the business of a priest to tear his sovereign from her society, and much less to maim or murder her."<sup>42</sup>

The course to her was brutal in the extreme,<sup>43</sup> and for it there should have been punishment.

Elgiva, "naturally incensed, procured the banishment of Dunstan. In his absence, Odo, archbishop of Canterbury, sent armed men, who tore her from her husband's residence and carried her a prisoner to Ireland, where her face was branded with red-hot irons, in order to destroy her fatal attractions. When her wounds were healed, she returned in all her beauty; and being found at Gloucester, by bands of the opposite party, who hamstrung her, she was soon released from her sufferings by death."<sup>44</sup>

Mr. Turner speaks of the Mercians and Northumbrians having

<sup>40</sup> 1 Lingard's Engl., ch. 5, p. 215. Mr. Turner says, "For Edwin to have been 16 at his accession, his father must have been married at 15, because Edmund was 18 in 941." Turner's Anglo-Saxons, book 6, ch. 5, p. 199, note 2.

<sup>41</sup> As to whether she was wife or mistress, different views have been expressed. 1 Hume's Engl., ch. 2, p. 88 to 90 of N. Y. ed. 1850; 1 Lingard's Engl., ch. 5, p. 216; Turner's Anglo-Saxons, book 6, ch. 5, p. 215.

<sup>42</sup> Hallam's Mid. Ages, ch. 7, pp. 415, 416 of Phila. ed. 1824.

<sup>43</sup> Turner's Anglo-Saxons, book 6, ch. 5, p. 215 to 220 of vol. II, ed. 1852.

<sup>44</sup> 1 Mackintosh's Engl., ch. 2, pp. 54, 55 of Phila. ed. 1830. Sir James Mackintosh says, "There appears no proof that the archbishop, far less Dunstan, who was in Flanders, gave any orders for these atrocities, which, however, were perpetrated by their adherents, and praised by their encomiasts." *Id.* p. 55.



rebelled, and appointed Edgar (Edwin's brother), a boy but 13 years of age, to govern them—of Dunstan being recalled, and of the kingdom being divided between Edwin and Edgar; and says:

Edwin's "catastrophe was a misfortune both to England and Europe. It made the enmity of the ecclesiastical power an object of terror. It exhibited a precedent of a king insulted, injured, persecuted and dethroned by the agency or effects of sacerdotal enmity."<sup>45</sup>

It may be that Edwin was killed in Gloucestershire; or that, "unable to endure unmerited odium, deprivation of power, a brother's rebellion and the murder of his beloved wife, he sunk pining into death." His life ended in 959.<sup>46</sup>

4. *Of the laws and administration of justice in Edgar's reign (959 to 975); especially of Dunstan, archbishop of Canterbury and prime minister.*

Edgar,<sup>47</sup> at the age of 16, succeeded to all the Anglo-Saxon dominions.<sup>48</sup> Mr. Hume says:

The chief means by which Edgar maintained his authority and preserved public peace, was the paying of court to Dunstan and the monks who had at first placed him on the throne, and who, by their pretensions to superior sanctity and purity of manners, had acquired an ascendant over the people.—"The king and the bishops found such advantages in their mutual agreement that they always acted in concert."<sup>49</sup>

Lord Coke, speaking (in 4 Inst., 79,) of the kings who had chancellors, says "King Edgar had Adulph." Who is the person meant by Lord Coke, or that was Edgar's chancellor, does not clearly appear.

Odo having died in Edwin's time, Dunstan was elevated by Edgar

<sup>45</sup> Turner's Anglo-Saxons, book 6, ch. 5, pp. 220, 221; see also 1 Lingard's Engl., ch. 5, p. 220.

<sup>46</sup> Turner's Anglo-Saxons, book 6, ch. 5, p. 220.

<sup>47</sup> When very young he lost his mother and was by his father entrusted to the care of the wife of Athelstan, an East-Anglian ealdorman. With their children

he was educated; it is said their four sons Ethelwold, Alfwold, Athelsin and Ailwin were long his favorite counsellors. 1 Lingard's Engl., ch. 5, p. 220.

<sup>48</sup> Id. pp. 221, 222; Turner's Anglo-Saxons, book 6, ch. 6, p. 222 of vol. II, and book 8, ch. 1, p. 130 of vol. III.

<sup>49</sup> 1 Hume's Engl., ch. 2, p. 90 to 93.

to the see of Canterbury, and was succeeded in the bishopric of Worcester by Oswald, nephew of Odo. Three years afterwards Ethelwold, abbot of Abingdon, who had been bred up by Dunstan, was raised to the see of Winchester. Dunstan, Oswald and Ethelwold were the king's counsellors and friends. A pleasing part of Ethelwold's character was his attention to the literary education of the youth at Winchester; and Dunstan is admitted to have had a taste for knowledge and the civilizing arts.<sup>50</sup> As to other attributes of his character and the policy of Edgar's government, there is difference of opinion.<sup>51</sup>

"The actual direction of affairs lay in the hands of Dunstan, whose elevation to the see of Canterbury set him at the head of the church as of the state."<sup>52</sup>

For Edgar's conduct in the indulgence of his animal passions, though it was infinitely worse than that of Edwin, the archbishop merely reprov'd him and required him to submit to a course of penance; the punishment was very slight in comparison with that inflicted on Edwin and Elgiva.<sup>53</sup>

Mr. Green observes, "It was not till Eadgar's (Edgar's) day that the name of Britain passed into the name of Engla-land, the land of Englishmen, England."<sup>54</sup>

Mr. Turner regards Edgar as "the king of a prosperous nation in a fortunate era;" and thinks that "abstracted from his vices," Edgar "may be ranked in the superior order of our Saxon sovereigns."<sup>55</sup>

<sup>50</sup> 1 Lingard's Engl., ch. 5, p. 221; Turner's Anglo-Saxons, ch. 6, pp. 223, 224, 225 of vol. II. "Dunstan himself while Abbot, was famous as a teacher; Æthelwold raised Abingdon into a school second only to Glastonbury. Abbo, the most notable scholar in Gaul, came from Fleury, at the Primate's invitation." Green's Short Hist., ch. 1, § 6, p. 88.

<sup>51</sup> 1 Hume's Engl., ch. 2, p. 90 to 93 of New York edi. 1850; 1 Lingard's Engl., ch. 5, p. 221 *et seq.*; Turner's Anglo Saxons, book 6, ch. 6, p. 222 to

226 of vol. II; Id. p. 230; 1 Green's Hist. of Engl. Peop., ch. 4, p. 95 *et seq.*

<sup>52</sup> Green's Short Hist., ch. 1, § 6, p. 88; 1 Green's Hist. of Engl. Peop., ch. 4, p. 95.

<sup>53</sup> 1 Hume's Engl., ch. 2, p. 93 to 96; 1 Lingard's Engl., ch. 5, pp. 230, 231; Turner's Anglo-Saxons, book 6, ch. 6, pp. 228, 229, of vol. 2, edi. 1852.

<sup>54</sup> 1 Green's Hist. of Engl. Peop., ch. 4, p. 96.

<sup>55</sup> Turner's Anglo-Saxons, book 6, ch. 6, pp. 231, 232, of vol. 2, edi. 1852.

The spirit of his legislation is good.<sup>56</sup> The preamble of his secular laws declares that every man shall be worthy of folkright, poor as well as rich; and the penalties for unrighteous judgment, with the promise of redress by the king in the last resort, immediately follow.<sup>57</sup> His judicial circuits may have been copied from Alfred's practice. The tradition is, that Edgar was occupied in the winter and spring in going through the provinces and enquiring into the observance by the magistrates of the laws of the nation and his own decrees.<sup>58</sup> About this Dr. Lingard speaks particularly.<sup>59</sup> He says:

"In the internal administration of the government, Edgar exhibited an example worthy the imitation of future kings. He usually spent the winter months in making progresses through the different counties, everywhere reforming abuses, enquiring into the conduct of the magistrates, and listening to the complaints of the people. He was most anxious that the poor should obtain justice equally with the rich. By his authority family feuds were suppressed and men were compelled to submit the decision of their quarrels to the legal tribunals. He restored the coinage to its legitimate weight and purity, enforced the punishment of exile against malefactors convicted of atrocious offences, and almost extinguished the crime of robbery by the vigilance with which he caused the guilty to be pursued, and by the impediments which his laws opposed to the transfer of stolen property."<sup>60</sup>

Soon after the death of Osulf, earl of Northumbria, and its division into two earldoms,<sup>61</sup> the witan, assembled at York, and Edgar addressed them thus:

<sup>56</sup> 1 Stubbs's Const. Hist., ch. 207, p. 208. The hundred and the wapentake are mentioned in Edgar's laws. Id. ch. 5, pp. 96, 98, 99. It seems to have been thought there was a danger that the old local organizations might become obsolete. Edgar had found it necessary to renew the law of the hundreds, and to forbid recourse to the king's audience until the local means of obtaining justice had been exhausted." Id. ch. 7, p. 209.

<sup>57</sup> Id. p. 208 and note 2, citing Edgar 3, § 1. '*Volo ut omnis homo sit dignus juris publici, pauper et dives, quicumque sit, et eis justa judicia judicentur: et sit in emendationibus remissio venialis*

*apud Deum et apud sæculum tolerabilis.*' The latter clause is re-echoed in the charters of Henry I, and John, and may be traced back in the legislation of Alfred.

<sup>58</sup> 1 Stubbs's Const. Hist., ch. 7, p. 208. In Mr. Turner's language, "to examine the conduct of the powerful, to protect the weak, and to punish any violation of law." Hist. of Anglo-Saxons, book 6, ch. 6, p. 230 of vol. II.

<sup>59</sup> 1 Lingard's Engl., ch. 5, p. 223

<sup>60</sup> 1 Lingard's Engl., ch. 5, p. 223 and p. 225.

<sup>61</sup> Of which Edgar "gave one, extending from the Humber as far as the Tees,

"It is my will that, with respect to worldly rights, the Danes choose for themselves such laws as are best; and that the English observe the statutes which I and my counsellors have added to the ancient dooms. But one thing I would have to be common to all my people, English, Danes and Britons, in every part of my empire: that both rich and poor possess in peace what they have rightfully acquired, and that no thief find a place where he may secure the property which he has stolen."<sup>62</sup>

After a visit from Kenneth, king of Scotland, to Edgar, in London, Lothian was transferred to the crown of Scotland, on the condition that its inhabitants should be permitted to retain their language, laws and customs.<sup>63</sup>

Proud of his ascendancy, fond of display, and in the habit of assuming the most lofty titles,<sup>64</sup> it seems extraordinary that Edgar should have permitted thirteen years of his reign to elapse before he was crowned. The ceremony was performed at Bath, on the 11th of May, 973; soon after which he proceeded on a long cruise,<sup>65</sup> in which his kingly power was displayed with pomp, and with such actions as, in Mr. Turner's view, neither manifest true greatness, nor confer lasting dignity.<sup>66</sup>

to Oslach, and the other, comprising the lands on the north of that river, to Eadulf." 1 Lingard's Engl., ch. 5, p. 222. "From the northern bank" (of the Tees) "to Moreforth, in the maritime part of Deira, the earl Eadulf governed." Turner's Anglo-Saxons, book 6, ch. 6, p. 227 of vol. ii.

<sup>62</sup> 1 Lingard's Engl., ch. 5, pp. 222, 223. After a few regulations for this purpose he proceeds: "Again it is my will that the Danes select for themselves the best laws in their power"—"Among the English I and my witan have fixed proportionate fines for different transgressions; and my wish is that you do the same with discretion and for my interest. And let the earl Oslac, and all the military men who dwell in this earldom observe it; and let copies be made and sent to the ealdormen Ælfore, and Ægilwin, that it may come to the knowledge of all, both rich and poor."

Id. p. 223. Ælfore was ealdorman of the Danes in the north of Mercia; Ægilwin or Aylwin of those in East Anglia. Id. p. 223, *note*.

<sup>63</sup> Id. pp. 224, 225.

<sup>64</sup> Id. p. 224 and p. 228.

<sup>65</sup> Id. p. 228.

<sup>66</sup> It is stated "that with a great fleet Edgar sailed to Chester on the Dee, and that eight kings, Kenneth, king of Scotland, Malcolm of Cambria, Maccus of Anglesey and the Isles, three kings of Wales, and two others, repaired thither at his command to do him homage. He was not satisfied with this confession of his power; his puerile vanity demanded a more painful sacrifice; he ascended a large vessel with his nobles and officers; and he stationed himself at the helm, while the eight kings who had come to do him honour, were compelled to take the seats of the watermen and to row him down the Dee."

Edgar died in 975, at the age of thirty-two, having by his first wife, Elfleda the fair (daughter of Ordmer), a son, Edward, whom he named as his successor;<sup>67</sup> and by his second wife, Elfrida, daughter of the Earl of Devonshire, two sons, of whom Ethelred survived him.<sup>68</sup>

5. *Of Edward the Martyr—975 to 978; and Ethelred the unready. Whether he had a chancellor. Under him the administration of justice was feebly enforced, and for a time entirely suspended. His long and calamitous reign ended by his death, April 23, 1016, when great progress had been made by the Danes under Canute.*

At Edgar's death his younger son was only seven, whereas Edward was thirteen, perhaps fifteen, years old; in his favour his father's will concurred with primogeniture. Yet his succession was opposed.<sup>69</sup>

"At length a general meeting of the witan was held, and Dunstan so victoriously proved the right of Edward that he was chosen king without farther opposition, and was crowned with the usual solemnity."<sup>70</sup>

Of the Anglo-Saxon kings he was Edward the second. His youth, innocence and tragical death, caused the people to give him the name of Martyr.<sup>71</sup> The feelings of the nation were expressed when the remains of the deceased sovereign were removed from Woldham and buried with honour at Shaftesbury.<sup>72</sup>

"The absence of other claimants compelled" (or caused) "the pre-

Turner's Anglo-Saxons, book 6, ch. 6, pp. 227, 228, of vol. 2, edi. 1852.

<sup>67</sup> And a daughter who became a nun. Turner's Anglo-Saxons, book 6, ch. 6, p. 231 of vol. II.

<sup>68</sup> The other (Edmund) died before his father. Id.

<sup>69</sup> 1 Hume's Engl., ch. 2, pp. 97, 98 of N. Y. edi. 1850; 1 Lingard's Engl. ch. 5, pp. 231, 232; Turner's Anglo-Saxons, ch. 7, pp. 233, 234 of vol. II.

<sup>70</sup> Ibid; also Turner's Anglo-Saxons, book 8, ch. 1, p. 131 of vol. III.

<sup>71</sup> During his reign Dunstan was prominent in a synod at Winchester

and a council at Calne; his conduct is viewed by Mr. Hume and Mr. Turner in a light very different from that in which Dr. Lingard regards it. He withdrew to Canterbury and survived till 988. 1 Hume's Engl., ch. 2, pp. 98, 99; 1 Lingard's Engl., ch. 5, pp. 232, 233; Turner's Anglo Saxons, book 6, ch. 7, pp. 234, 235, 237, ch. 9, p. 262 of vol. 2; Green's Short Hist., ch. 1, § 6, p. 91; 1 Green's Hist. of Engl. Peop., ch. 4, p. 96.

<sup>72</sup> Turner's Hist. of Anglo-Saxons, book 6, ch. 9, p. 261 of vol. 2, edi. 1852.

lates and thanes, though with no small reluctance, to bestow the crown" on Ethelred, "the son of the murderess. The ceremony was performed at Kingston, on the Sunday after Easter (14 April), 978.—Ethelred was only ten years of age, handsome in person and amiable in disposition, but his spirit had been broken by the violence and barbarity of his mother. When he wept at the untimely death of Edward, she considered his tears a reproach to herself, and punished him so severely that his life was thought to be in danger. But as he advanced in age her influence gradually declined, and she at last bade farewell to the court."<sup>73</sup>

Ethelred married, in the 19th year of his age, Elfleda;<sup>74</sup> and after her death, Emma, daughter of Richard (Marquis or Duke) of Normandy,<sup>75</sup> who, on her marriage, assumed the name of Elgiva.<sup>76</sup>

Elfrida's son was, after his *first* marriage, unfortunate.<sup>77</sup> After his *last* marriage the rejoicings occasioned thereby were scarcely concluded when there was a measure which associates his name with infamy.

"In the beginning of November (1002), his officers in the towns and counties received from him secret orders to organize against a certain day a general massacre of the Danes within their respective jurisdictions. On the 13th of that month, the festival of St. Brice, the unsuspecting victims, with their wives and families, were seized by the populace, and the horror of the murder was in many places aggravated by every insult and barbarity which national hatred could suggest. At London they fled for security to the churches, and were massacred in crowds around the altars."<sup>78</sup>

Historians concur in condemning this massacre.<sup>79</sup> Mr. Turner characterizes it "as useless as imbecility could devise, and as sanguinary as cowardice could perpetrate."<sup>80</sup>

<sup>73</sup> 1 Lingard's Engl., ch. 5, pp. 232, 233, 234; Turner's Anglo-Saxons, book 6, ch. 9, pp. 260, 261. The wicked woman who caused and procured Edward's death, "built monasteries and performed many penances in order to atone for her guilt, but could never, by all her hypocrisy or remorse, recover the good opinion of the public." 1 Hume's Engl., ch. 2, p. 100.

<sup>74</sup> Daughter of the ealdorman Thored, who bore him six sons and four daughters. 1 Lingard's Engl., ch. 5, p. 239.

<sup>75</sup> Id. p. 241.

<sup>76</sup> Id.

<sup>77</sup> By his neglect of his young queen, he alienated her affections, and provoked the resentment of her brother Richard. Id. p. 241; Turner's Anglo-Saxons, book 6, ch. 9, p. 272, of vol. 2.

<sup>78</sup> 1 Lingard's Engl., ch. 5, pp. 241, 242.

<sup>79</sup> 1 Hume's Engl., ch. 3, p. 109, of N. Y. ed., 1850; 1 Freem. Norm. Conquest, pp. 212, 213, and appendix G. G., p. 430 to 432.

<sup>80</sup> Turner's Anglo-Saxons, book 6, ch. 9, p. 269.

"The most illustrious of the sufferers was Gunhilda, the sister of Sweyn, who had embraced christianity, and had married Palig, a naturalized Northman. By the orders of the royal favorite (the infamous Edric), her children and husband were slaughtered before her eyes. In the agonies of death she is said to have foretold the severe revenge which her brother would one day inflict, both on him who commanded and on those who perpetrated the murder."<sup>81</sup>

Never was prophecy better fulfilled, and never did barbarous policy prove more fatal to the authors.<sup>82</sup>

"During four years" (1003 to 1007) "England presented the mournful spectacle of a nobility divided by faction, treason and murder; of a king unequal to the duties of his station, and of a people the sport of an exasperated and vindictive enemy."<sup>83</sup>

Peace, *for a time*, was obtained in 1006, or 1007, on paying the Danes £36,000.<sup>84</sup> The Danish fleet reappeared under command not of Sweyn, but of Thurchill; he carried fire and devastation into different parts of the kingdom for three years; then he received £48,000.<sup>85</sup> To this period is referred the origin of direct and annual taxation.<sup>86</sup>

Lord *Coke* says King Etheldred had "a worthy man to his chancellor."<sup>87</sup>

<sup>81</sup> 1 Lingard's Engl., ch. 5, pp. 241, 242.

<sup>82</sup> 1 Hume's Engl., ch. 3, p. 110.

<sup>83</sup> 1 Lingard's Engl., ch. 5, p. 243, citing Chron. Sax., 133-136; 1 Green's Hist. of Engl. Peop., ch. 4, p. 98.

<sup>84</sup> 1 Lingard's Engl., ch. 5, p. 243. Turner says, "in 1006 the Danes obtained £36,000." Hist. Anglo-Saxons, ch. 9, p. 273, of vol. 2.

<sup>85</sup> Lingard states that Thurchill, after ravaging the greater part of thirteen counties, sold his friendship and services to Ethelred for £48,000; many of his followers accepting settlements on the island." 1 Lingard's Engl., ch 5, p. 245. Turner says: "In 1010 the triumph of the Danes was completed in the surrender of sixteen counties of England, and the payment of £48,000."

Hist. Anglo-Saxons, book 6, ch. 9, p. 274. See also 1 Green's Hist. of Engl. Peop., ch. 4, pp. 98, 99.

<sup>86</sup> Turner's Hist. of Anglo-Saxons, book 6, ch. 9, p. 264. "The sums which Ethelred so frequently paid to the Northmen were raised by an impost on landed property, which did not cease with the occasion, but was retained for centuries under the pretext of providing for the defence of the kingdom. The assessments were at first apportioned with apparent equity; but they soon gave birth to much extortion, and consequently to much misery." 1 Lingard's Engl., ch. 5, p. 245.

<sup>87</sup> In 4 Inst. 79, there is a reference to the second book of the history of Ely, and this quotation, *Rex Etheldredus statuit atque concessit quatenus ecclesiam*

"Since the death of Edgar, the administration of justice had been but feebly enforced; of late, it had been entirely suspended. The absence of legal punishment, and the license of a state of warfare, had left the passions of individuals without restraint; the most atrocious crimes were committed with impunity, and men sought to indemnify their own losses by the spoliation of their neighbours. On the one side, relations were sold for slaves by their relations, children in the cradle by their parents; on the other, the slaves often rose on their masters, pillaged their property, and then deserted to the enemy. The thanes of each district adopted at last the general policy of the nation. Instead of uniting with their neighbours against the common enemy, they negotiated for their own security, and by the payment of a sum of money dismissed the barbarians to another county."<sup>88</sup>

Upon the invasion in 1013, Sweyn was quickly established in London; and Ethelred was in despair.<sup>89</sup> In the second week of January, 1013-14, he fled from England; in the first week of February Sweyn died, having appointed his son Canute to succeed him. The English invited Ethelred to reascend the throne.

"His son, Edward, met the thanes at London; it was agreed that the king should forgive all past offences, should govern according to law, and should, on important occasions, follow the advice of the great council; and that the thanes on their part should swear to support his authority and never submit to a Danish sovereign."

Ethelred returned about the middle of Lent, and led an army against the enemy,<sup>90</sup> but not profiting by past experience, repeated, on a smaller scale, that system of massacre for which the English had already suffered so severely. Among those whom it embraced

*de Elye ex tunc et semper in regis curiæ cancellariæ ageret dignitatem, &c.* Lord Coke says, "Although it was void in law to grant the chancellorship of England in succession, yet it proveth that then there was a court of chancery." *Ibid.*

<sup>88</sup> 2 Lingard's Engl., pp. 246, 247.

<sup>89</sup> Having recommended his wife and children to the care of his brother Richard, he sailed clandestinely to the Isle of Wight, where he remained in concealment till a messenger from his wife brought him the offer of an asylum in Normandy. 1 Lingard's Engl., ch. 5,

p. 249; Turner's Anglo-Saxons, book 6, ch. 9, pp. 274, 275.

<sup>90</sup> Canute fled; "inhabitants of Danish extraction" were put to the sword; and to revenge their fate he ordered the hostages who had been delivered to his father to be deprived of their ears, noses and hands. In this mutilated state, sons of noble families among the English were landed at Sandwich. 1 Lingard's Engl., ch. 5, p. 250; Turner's Anglo-Saxons, book 6, ch. 9, pp. 275, 276, of vol. 2, edi. 1852.



were two earls, Sigeforth and Morcar, who being invited to a banquet by the king's favorite, Edric, were, in the midst of the feast, murdered by armed men. Edmund, the king's eldest son, petitioned for their possessions.

"The father refused, and the young prince hastened to Malmsbury, married" Sigeforth's relict, Algiva, "whom the king had confined in the monastery, rode with her into Northumberland, and by his influence prevailed on the Seven-burghers to receive him as their chieftain."<sup>91</sup>

It would be difficult to select a period in English history in which the nation was visited with such a multiplicity of calamities as during the protracted reign of Ethelred.<sup>92</sup> When Canute had returned from Denmark, and against his hostile army the defence had been resigned to Edmund by his father, harassed with care and worn out with disease, and at the moment when the Danes were preparing to besiege him in his capitol, Ethelred, on the 23d of April, 1016, terminated his long and calamitous reign, leaving of sons by his first wife, Edmund, Edwy and Athelstan, and by Emma, two others, Edward and Alfred.<sup>93</sup>

"In the cathedral of St. Paul, founded by Ethelbert, king of the Saxons,"—"almost at the entrance of the choir, in a certain recess are two small chests, one of which is thus inscribed: 'Here lies Seba, king of the East Saxons, who was converted to the faith by St. Erkenwald,'<sup>94</sup> bishop of London, A. D. 607.' On the other: 'Here lies Ethelred, king of the Angles, son of King Edgar.'"

These inscriptions were seen and copied in 1598, by Paul Hentzner,<sup>95</sup> of whom there is further mention in ch. 33, § 47.

<sup>91</sup> Lingard's Engl., ch. 5, p. 251. The *five* burghers being Leicester, Stamford, Derby, Nottingham and Lincoln, Dr. Lingard supposes the *seven* were "probably the same, with the addition of Chester and York." *Id.* p. 251 note.

<sup>92</sup> *Id.* pp. 234, 235.

<sup>93</sup> *Id.* p. 254. Not only from Dr. Lingard, but also from Mr. Hume (1 Hume's Engl., ch. 3, p. 113), Mr. Turner varies when he says of Edmund, that, "like

Athelstan, he was illegitimately born." Hist. Anglo-Saxons, book 6, ch. 10, p. 279. See also 1 Green's Hist. of Engl., Peop., ch. 4, pp. 99, 100.

<sup>94</sup> As to King Sebbi, or Sebbe, and Bishop Earconwald, there may be reference to Bede's Eccl. Hist., book 3, ch. 30, p. 192, and book 4, ch. 6, p. 208, and ch. 11 p. 215 to 217.

<sup>95</sup> Hentzner's Travels, p. 6, and p. 9 of edi. 1797.

6. *Of seven months, in 1016, under Edmund Ironside; and the period from 1016 to 1034-5, under Canute, the Dane. Of his laws and character; its grandeur in his latter days; his noble conception of kingship.*

Edmund was in London at the time of his father's death, and was immediately proclaimed king. He struggled in vain "to reëstablish the independence of his country." Compelled by the expostulations of troops, the two kings met "and agreed to a compromise. Mercia and Northumbria" (and perhaps East Anglia), "were the portion of Canute; the remainder, with the royal supremacy, was retained by Edmund." Within a month after the pacification, and but little more than seven after his father's death, there was a termination of the life of Edmund, who, "from his armour or his strength," "acquired the surname of Ironside." "His memory was long cherished by the gratitude and admiration of his subjects." He left two sons, Edward and Edmund.<sup>96</sup>

Upon the death of Edmund Ironside, Canute, at the age of 21, was chosen king of England, with the general assent of the nation in its then condition.<sup>97</sup> He is charged with causing the murder of Edmund's brother Edwy. Edmund's half-brothers, Edward and Alfred, being in Normandy, Canute sought in marriage their mother, Emma; she accepted—and her brother reluctantly assented to—the

<sup>96</sup> 1 Hume's Engl., ch. 3, p. 114; 1 Lingard's Engl., ch. 5, p. 254, and pp. 257, 258; Turner's Anglo-Saxons, book 6, ch. 10, pp. 283, 284, of vol. 2, and book 8, ch. 1 p. 131, of vol. 3; 1 Green's Hist. of Engl. Peop., ch. 4, pp. 99, 100. Edmund Ironside "departed on the feast of St. Andrew;" (Nov. 30 is the festival day of St. Andrew the apostle) "and was buried near the remains of his grandfather, at Glastonbury." 1 Lingard's Engl., pp. 257, 258.

<sup>97</sup> He sent to his half-brother, the king of Sweden—and thence were conveyed to the king of Hungary—Edmund's sons; of whom Edmund died in his

youth without issue; and Edward married Agatha, daughter of the Emperor of Germany. 1 Hume's Engl., ch. 3, p. 115; Turner's Anglo-Saxons, book 6, ch. 11, pp. 287, 288, 289, of vol. 2; 1 Lingard's Engl., ch. 6, pp. 259, 260. Of this marriage there were two sons, Edmund and Edgar, and two daughters, Margaret and Christina; the son Edgar being known as Edgar Atheling, and Margaret becoming afterward queen of Scotland. The son Edmund died early; the daughter Christina retired into a convent. Id.; Hayward's Life of Will. 1, in 3 Harl. Miscel., p. 128.

proposal; the marriage was celebrated in July, 1017; it having been "previously agreed that her issue by Canute should succeed to the crown of England."<sup>98</sup>

It is observed of Canute that "his measures to secure his crown were sanguinary and tyrannical," and the first part of his reign "cruel and despotic;" but that "his latter days shone with a glory more unclouded."<sup>99</sup>

"He often lamented the bloodshed and misery which his own rapacity and that of his father had inflicted on the natives; and acknowledged his duty to compensate their sufferings by a peaceful and equitable reign. He treated them with marked attention; protected them from the insolence of his Danish favorites, placed the two nations on a footing of equality, and admitted them alike to offices of trust and emolument."<sup>100</sup>

In a pamphlet printed in 1649, after mentioning that "whilst the Saxons ruled here they were governed by their own laws, which differed much from the British law," and that "some of these Saxon laws were afterwards digested into form, and are yet extant in their original tongue, and translated into Latin," is the following passage:

"The next alteration of our English laws was by the Danes, who repealed and nulled the Saxon law and established their own in its stead. Hence it is that the laws of England do bear great affinity with the customs of Denmark, in descents of inheritance, trials of right, and several other ways. It is probable that originally inheritances were divided in this kingdom amongst all the sons by gavelkind, which custom seems to have been instituted by Cæsar, both amongst us and the Germans (and as yet remains in Kent, not wrested from them by the conqueror); but the Danes being ambitious to conform us to the pattern of their own country, did doubtless alter this custom and allot the inheritance to the eldest son; for that was the course in Denmark, as Walsingham reports."<sup>101</sup>

<sup>98</sup> Id. and 1 Lingard's Engl., ch. 6, p. 260.

<sup>99</sup> Turner's Anglo Saxons, book 6, ch. 11, pp. 287, 288, 293; 1 Green's Hist. of Engl. Peop., ch. 4, p. 100.

<sup>100</sup> 1 Lingard's Engl., ch. 6, p. 263.

<sup>101</sup> In his Upodigma Neustriæ: *Pater cunctos filios adultos à se pellebat, præter unum quem hæredem sui juris relinquebat*, i. e., 'Fathers did expose and put forth all their sons, besides one, whom they made heir of their estates.' Harl. Miscel., vol. 6, p. 218, edi. 1810.

Canute's laws are mentioned by Turner<sup>102</sup> and by Lingard.<sup>103</sup> The latter says:

"In a witina-gemot at Oxford," Canute "confirmed the laws of Edgar, and persuaded the English and Danish thanes to forgive each other every former cause of offence, and to promise mutual friendship for the future. In another, at Winchester, a code of laws was compiled from the enactments of former kings, with such additions as were required by the existing state of society. From it" interesting particulars are selected, some of which are mentioned below.<sup>104</sup> By the fourth, the existing system of jurisprudence which he confirmed, was divided into three branches, the law of the West-Saxons, the law of the Mercians and the law of the Danes. The two former had been preserved from the time of the Heptarchy, and prevailed in their respective districts; the latter had been introduced into East Anglia and Northumbria by the Danes, who had settled in those countries since the beginning of the ninth century. Of all three the substance was the same; they differed only in the amount of the pecuniary mulcts which were imposed on various transgressions. The king undertook to ease his people of part of the burthens arising from the feudal services, which, in England, as

<sup>102</sup> In Turner's *Anglo-Saxons*, book 6, ch. 11, p. 290, of vol. 2, it is mentioned that in 1020, in Easter, Canute held a great council at Cirencester. In same volume, appendix iii, as to the *Anglo-Saxons*, it is in chapter 7, as to "their legal tribunals," stated, pp. 457, 458, that "by the laws of Canute it was ordered that there should be two shire-gemots and three burgh-gemots every year, and the bishop and the ealdorman should attend them." In vol. 3, book 8, ch. 6, p. 198, is a statement of "principles which appear in the laws of King Canute."

<sup>103</sup> 1 Lingard's *Engl.*, ch. 6, p. 262.

<sup>104</sup> "i. The king exhorted all those who were entrusted with the administration of justice, to be vigilant in the punishment of crimes, but sparing of human life; to treat the penitent with less, the impenitent culprit with greater severity; and to consider the weak and indigent as worthy of pity, the wealthy and powerful as deserving the full rigour of the

law; because the former were often driven to the commission of guilt by two causes, which seldom affected the latter, oppression and want. ii. He severely prohibited the custom of sending Christians for sale into foreign countries." "The reason which he assigned was not that there is anything immoral in the institution of slavery, but that such Christians were in danger of falling into the hands of infidel masters, and of being seduced from their religion. iii. By the incorporation of the Danes with the natives, the rites of paganism had again made their appearance in the island. Canute forbade the worship of the heathen gods, of the sun or moon, of fire or water, of stones or fountains, and of forests or trees. At the same time he denounced punishment against those who pretended to deal in witchcraft, and the 'workers of death,' whether it were by lots or by flame, or by any other charms." 1 Lingard's *Engl.*, ch. 6, p. 264.

well as the other European nations, had long been on the increase. He totally abolished the custom of purveyance, forbidding his officers to extort provisions for his use, and commanding his bailiffs to supply his table from the produce of his own farms. He fixed at a moderate value the heriots which were paid at the demise of tenants, and apportioned them to the rank of the deceased, whether they died intestate or not. With respect to heiresses, whose helpless condition frequently exposed them to the tyranny of their lords, he enacted that neither maid nor widow should be compelled to marry against her will."<sup>105</sup>

Canute generally resided in England, but occasionally visited Denmark;<sup>106</sup> and about 1026, or 1027,<sup>107</sup> made a pilgrimage to Rome. On his road he visited the most celebrated churches, and left "proofs of his devotion and liberality." In his return he proceeded immediately to Denmark, and dispatched the abbot of Tavistock to England with a letter,<sup>108</sup> wherein he speaks of there being, in 1027, "at the festival of Easter, a great assemblage of noble personages with the lord, and the Pope John, and the Emperor Conrad, namely, all the chief of the nations, from Mount Gargano to the nearest sea;"<sup>109</sup> and says:

"I therefore took the opportunity to treat with the pope, the emperor and the princes, on the grievances of my people, both English

<sup>105</sup> 1 Lingard's Engl., ch. 6, p. 263 to 265. "In conclusion, he commanded these laws to be observed both by the Danes and the English, under the penalty of a single *were* for the first offence, of a double *were* for the second, and of the forfeiture of all property for the third." Id., p. 265. The date of "The laws of Cnut" is discussed in 1 Freem. Norm. Conquest, appendix I I I, pp. 496, 497. See also 1 Green's Hist. of Engl. Peop., ch. 4, p. 101.

<sup>106</sup> Mr. Turner mentions that "in 1019 England was so tranquil that he went to Denmark, and passed the winter in his native country." There is also intimation of his going thither in 1025. Turner's Anglo-Saxons, book 6, ch. 11, pp. 290, 291, of vol. 2. Dr. Lingard states that "he was accompanied by an English

fleet; and carried with him pious and learned missionaries to civilize and instruct his countrymen." 1 Lingard's Engl., ch. 6, p. 265.

<sup>107</sup> The year of the journey to Rome is discussed in 1 Freem. Norm. Conquest, pp. 494, 495.

<sup>108</sup> 1 Lingard's Engl., ch. 6, p. 265. The letter begins, "Canute, king of all Denmark, England and Norway, and of part of Sweden, to Archbishop Alfric, to all the bishops and chiefs, and to all the nation of the English, both nobles and commons." Id. p. 266.

<sup>109</sup> "Who all received me honorably and made me valuable presents; but particularly the emperor, who gave me many gold and silver vases with rich mantles and garments." Id., p. 266.

and Danes; that they might enjoy more equal law and more secure safeguard in their way to Rome, nor be detained at so many barriers, nor harassed by unjust exactions. My demands were granted both by the emperor and by King Rodulf, to whom the greater part of the barriers belong; and it was enacted by all the princes that my *men*, whether pilgrims or merchants, should for the future go to Rome and return in full security, without detention at the barriers or the payment of unlawful tolls. I next complained to the pope, and expressed my displeasure, that such immense sums were extorted from my archbishops, when, according to custom, they visited the apostolic see to obtain the pallium. A decree was made that this grievance should cease. Whatever I demanded for the benefit of my people, either of the pope, or the emperor, or the princes, through whose dominions lies the road to Rome, was granted willingly, and confirmed by their oaths, in the presence of four archbishops, twenty bishops and a multitude of dukes and nobles."

"Be it known to you all that I have dedicated my life to the service of God, to *govern my kingdoms with equity and to observe justice* in all things. If, by the violence or negligence of youth I have violated justice heretofore, it is my intention, by the help of God, to make full compensation. Therefore I beg and command those to whom I have confided the government, as they wish to preserve my friendship, or save their own souls, to do no injustice, either to rich or poor. *Let all persons, whether noble or ignoble, obtain their rights according to law*, from which no deviation shall be allowed, either from fear of me, or through favour to the powerful, or for the purpose of supplying my treasury. *I have no need of money raised by injustice.*"<sup>110</sup>

This letter of Canute (or Cnut) is commended by various writers.<sup>111</sup> Mr. Green speaks of it as a letter which "marks the grandeur of his character and the noble conception he had formed of kingship."<sup>112</sup>

In the latter part of his life, Canute "commissioned an agent at Rome to purchase St. Augustine's arm, for one hundred talents of silver and one of gold; a much greater sum than the finest statue of

<sup>110</sup> Id., p. 266, to 268; and Turner's Anglo-Saxons, book 6, ch. 11. p. 297 to 299, of vol. 2. The letter concludes thus: "Lastly, I entreat my bishops and all the sheriffs, by the fidelity which they owe to me and to God, that the church-dues according to the ancient laws, may be paid before my return; namely, the plough-alms, the tithes of cattle of the present year, the Peter-pence, the tithes of fruit in the middle of August, and

the kirk-shot at the feast of St. Martin, to the parish church. Should this be omitted, at my return I will punish the offender by exacting the whole fine appointed by law. Fare ye well." 1 Lingard's Engl., ch. 6, p. 268.

<sup>111</sup> 1 Freem. Norm. Conquest, ch. 6, pp. 290, 291.

<sup>112</sup> 1 Green's Short Hist., ch. 2, § 1, pp. 95, 96; 1 Green's Hist. of Engl. Peop., ch. 4, p. 10.

antiquity would then have sold for." It may be inferred that the importation of such a relic was suggested, not by a taste for art, but (like his building churches and endowing monasteries) by a desire to atone for acts of violence in the beginning of his reign. The circumstance is mentioned in a notice of Canute by a native of Shaftesbury, at the end of which notice are these words: '*Ob* 1036.'<sup>113</sup> His death may have been earlier.<sup>114</sup> Turner states that "he died at Shaftesbury on the 12 of November, 1034."<sup>115</sup>

Canute was buried at Winchester.<sup>116</sup> He left by Alfgive, daughter of Alfhelm,<sup>117</sup> two acknowledged sons, Sweyn and Harold; and by his queen, Emma, a son called Hardicanute (or Canute the Hardy), and a daughter, Gunihilda. Sweyn had, after the assassination of Olave, and before Canute's death, been placed over Norway.<sup>118</sup>

*7. Of the reigns of Harold the first, and Hardicanute, from  
1034-5 to 1042.*

After Canute's death, many espoused Harold's interests; the wishes of the southern counties were divided between Hardicanute and one of the two sons of Ethelred.

"A compromise was effected in a witena-gemot at Oxford. To Harold were allotted London and the northern division of the kingdom; the counties on the right bank of the Thames were appropriated to Hardicanute, and during his absence were committed to the government of his mother, Emma, and the ealdorman Godwin."<sup>119</sup>

During that absence, there was shocking cruelty at Guildford to

<sup>113</sup> 1 Granger's Biogr. Hist., p. 3, of edi. 1779; 12 Nov., 1036, is the year in 1 Mackintosh's Engl., ch. 2, p. 62.

<sup>114</sup> 1035 is the year mentioned in 1 Lingard's Engl., ch. 4, p. 269.

<sup>115</sup> Turner's Anglo-Saxons, book 4, ch. 12, p. 300, of vol. 2, note; citing M. S. Tib. B 1. Shaftesbury is in Dorset county. It is 16 miles from Sherborne, 20 from Salisbury, and 101 from London.

<sup>116</sup> 1 Lingard's Engl., ch. 4, p. 269.

<sup>117</sup> Called Earl of Hampshire in 1 Hume's Engl., ch. 3, p. 119; and Earl of Northampton in 1 Lingard's Engl., ch. 6, p. 270. Consistent with the latter is Turner's Anglo-Saxons, book 6, ch. 12, p. 300, note 2, of vol. 2.

<sup>118</sup> 1 Lingard's Engl., ch. 4, pp. 269, 270.

<sup>119</sup> 1 Lingard's Engl., ch. 6, pp. 270, 271; Turner's Anglo-Saxons, book 6, ch. 12, p. 300, of vol. 2; book 8, ch. 2, p. 131 of vol. 3; 1 Hume's Engl., ch. 3, p. 120.

Prince Alfred (son of Ethelred) and his men, and the horrible murder of that prince at the isle of Ely, caused Emma to fly from England to Flanders; then Harold took possession of all the counties assigned to Hardicanute. Harold died in 1039, or soon afterwards.<sup>120</sup>

After Harold's death, when Hardicanute proceeded to England, his authority was immediately acknowledged. But "his renewing the imposition of danegelt and obliging the nation to pay a great sum of money to the fleet which brought him from Denmark" produced an insurrection which was punished by giving up a county to pillage and reducing a city to ashes. Discontent was increased by folly and barbarity as to Harold's dead body.<sup>121</sup> Yet "Hardicanute is described as mild in his manners and generous in his disposition." "He sent for his half-brother, Edward, from Normandy, received him with the sincerest friendship and gave him a princely establishment."<sup>122</sup> His death (June 4, 1042) severed the connection between the crowns of England and Denmark.<sup>123</sup>

8. *Of Earl Godwin; and the important part of him and his children in the reign of Edward the Confessor—1043 to 1066. Of occurrences in his reign bearing on the struggle of Godwin's son with the Normans. Of Edward's laws and administration of justice. Edward had a seal and a chancellor. Of his refounding the church of St. Peter, better known as Westminster abbey. His character.*

Of the service rendered by Godwin ('the son of an herdsman') to Ulfr, who had married Canute's sister, and had in a battle between

<sup>120</sup> 1 Hume's Engl., ch. 3, p. 120; 1 Lingard's Engl., ch. 6, pp. 273, 274; Turner's Anglo-Saxons, book 6, ch. 12, p. 302, of vol. 2. Mr. Hume states that his death was on the 14th of April, 1039; Dr. Lingard and Mr. Turner say in 1040; Mr. Green says in 1042. 1 Green's Hist. of Engl. Peop., ch. 4, pp. 102, 103. Dr. Lingard mentions that he was 'buried at Westminster.'

<sup>121</sup> 1 Lingard's Engl., ch. 6, pp. 274, 275, 276; 1 Hume's Engl., ch. 3, pp.

120, 121; Turner's Anglo-Saxons, book 6, ch. 13, p. 303, of vol. 2.

<sup>122</sup> 1 Lingard's Engl., ch. 6, p. 269 and pp. 276, 277; Turner's Anglo-Saxons, book 6, ch. 12, p. 300, of vol. 2.

<sup>123</sup> Id., p. 304; 1 Lingard's Engl., ch. 6, p. 277. Whether his body was laid with that of his father in the church of Westminster (Id., p. 277; Turner's Anglo-Saxons, book 6, ch. 13, p. 304,) is doubted in 1 Freem. Norm. Conquest, appendix T T T, pp. 518, 519.



Edmund and Canute become separated from him, Mr. Turner has given an interesting account. Ulfr "continued his attachment so far as afterwards to marry him to Gyda, his sister;" and to oblige Ulfr, Canute, in time, raised Godwin to the dignity of Jarl."<sup>124</sup>

Earl Godwin assisted in elevating to the throne Edward, the surviving son of Ethelred, and half-brother of Harold the first. It was not, however, before the following Easter (April 1043), that Edward, "*having promised to preserve the laws of Canute*, was crowned."<sup>125</sup> The Danes, who were interspersed with the English in most of the provinces, spoke nearly the same language, and "*differed little in their manners and laws*," seemed reconciled to his administration; to manifest their joy, the English "instituted an annual festival."

Edward was induced to marry Editha, the daughter of Godwin.<sup>126</sup> But Godwin became jealous of Norman favourites.

"The two marriages of Emma, a Norman princess, with two kings of England, had given occasion to the settlement of some Norman females in England; and the subsequent accession of Edward to the throne, had added to their number. He had been accompanied or followed by several foreign churchmen, whom he raised to high ecclesiastical dignities, and by several laymen who appear to have held inferior offices in the royal household. One of them he honoured with the title and office of Earl Radulf, the son of Diogo, count of Mantes; but then, if Radulf were a Frenchman on the father's side, he was an Anglo-Saxon by his mother, Goda, the sister of Edward. On the death of Diogo, this lady had married Eustace, count of Boulogne, who in 1050 came to England to visit his brother-in-law. It chanced, however, that either on his way to the court or on his return from it,

<sup>124</sup> Hist. of Anglo-Saxons, book 6, ch. 10, p. 285, and ch. 14, p. 305, of vol. 2. Upon Mr. Turner's account there are observations in 1 Freem. Norm. Conquest, appendix Z Z, p. 475 to 482. Godwine is further mentioned in Id. appendix A A A, pp. 482, 483, appendix E E E, p. 489 to 491, and appendix X X X, pp. 519, 520; and in 2 Id., appendix D, p. 358 to 363, E, p. 363 to 371, R, p. 404 to 408, Z, pp. 420, 421, A A, p. 421 to 425, D D, p. 428 to 432. Godwine's children are mentioned in Id., appendix F, p. 371 to 374.

<sup>125</sup> 1 Lingard's Engl., ch. 6, p. 278. Henry of Huntingdon says he was "*consecrated* at Winchester on Easter day, by Eadsige, the archbishop of Canterbury." Book 6, p. 202. "The election and coronation of Edward" are treated of in 2 Freem. Norm. Conquest, p. 3 to 12, and appendix A, p. 344 to 349.

<sup>126</sup> Hume's Engl., ch. 23, p. 122 to 124; Turner's Anglo-Saxons, book 6, ch. 14, p. 305, of vol. 2; Henry of Huntingdon, book 6, p. 202.

his followers quarrelled with the burghers of Dover, a town belonging to Earl Godwin; both had recourse to arms, and several persons, natives as well as foreigners, were slain."<sup>127</sup>

"Temperate measures were suggested by the wisdom of Leofric<sup>128</sup> and adopted by the moderation of Edward. It was proposed to summon the witenagemot, and to refer every subject of dispute to the decision of that assembly."—At the appointed day, "the thanes who held of Godwin and" (his son) "Harold, were compelled to swear fealty to the king; and the two earls were ordered to clear themselves of the accusations against them by the oaths of twelve compurgators, in the presence of the witan."—They were allowed five days either to establish their innocence, or to quit the kingdom."<sup>129</sup> They took the latter course.<sup>130</sup>

"At the very commencement of the insurrection, the foreign favorites had trembled for their safety; and by their advice Edward had solicited the assistance of William, duke of Normandy. Tranquillity was hardly restored, when that prince, with a powerful fleet, reached the coast of England. His services were no longer wanted, but he landed with a gallant train of knights, was kindly received by the king, visited several of the royal villas, and was dismissed with magnificent presents."<sup>131</sup>

Godwin, while at Bruges, was arranging means of revenge. In the channel he was met by Harold from Ireland. Their united squadrons "advanced up the Thames and sailed through the southern arch of the bridge at London."—From the reluctant king, was obtained "a commission to negotiate with Godwin." The result of it was, that "the foreign favorites were outlawed by decree of the great council; Godwin and Harold recovered their earldoms, and Editha was recalled from her prison to the throne." Godwin did not long survive. He died April 15, 1053; and his earldom was given to Harold.<sup>132</sup>

<sup>127</sup> Lingard's *Engl.*, ch. 6, pp. 285, 286.

<sup>128</sup> He "was called the earl of Leicesters, but his government comprehended most of the northern counties of Mercia." *Id.*, p. 279.

<sup>129</sup> *Id.*, pp. 287, 288.

<sup>130</sup> Godwin, with his wife and three sons, Sweyn, Tostig and Gurth, fled for protection to the earl of Flanders; Harold and his brother, Leofwin, hastened to Bristol, embarked on board a vessel

belonging to Sweyn, and with difficulty reached Ireland."—"The queen was entrusted to the custody of Edward's sister, the abbess of Wherwell."—She was conducted "to the monastery allotted for her residence and informed that her confinement was only a measure of temporary precaution." *Id.*, p. 288.

<sup>131</sup> *Id.*, p. 288.

<sup>132</sup> *Id.*, p. 288 to 291; Green's *Short Hist.*, ch. 2, § 2, p. 97 to 99.

In 1054, Aldred, bishop of Worcester, was sent to procure the return from Hungary of Edward, son of the king's brother, Edmund Ironside, who there had married a lady of the imperial family, by whom he had three children, Edgar, Margaret and Christina. In 1056, Edward arrived with his family in London; in a short time he sickened and died. His son Edgar (known as Edgar Atheling) was feeble in body and in mind, and less in the way of Harold's ambition than William, duke of Normandy. Now, a vessel in which Harold sailed from Bosenham was (in 1065) stranded in the mouth of the river Maye, on the opposite coast of Ponthieu; and Harold was conducted to the earl Guy, and surrendered to William at Eu, in Normandy. In the necessity of his situation Harold consented to do homage to William, as the apparent successor of Edward, and was constrained to swear before an assembly of William's barons that he (Harold) would promote William's succession to the English crown, and would guard his interest in Edward's court. After which he was permitted to leave Normandy.<sup>133</sup>

It was about the end of summer when Harold returned to England. His services were immediately required by an insurrection of the Northumbrians, which Tostig's rapacity and cruelty had caused, and which now had caused Tostig's flight.

When Harold met the insurgents and "enquired into the nature of their demands, they replied that they were freemen, and would not tamely submit to oppression; that they required the *confirmation of the laws of Canute*, and the appointment of Morcar to the earldom of Northumberland. Harold returned, and obtained the royal assent to their requests."<sup>134</sup>

According to Dr. Lingard (as mentioned in § 8, p. 93) Edward was not crowned until he had "*promised to preserve the laws of Canute*";<sup>135</sup> it was in the fall of 1065 that the Northumbrians required, and Edward assented to, "*the confirmation of the laws of Canute*,"<sup>136</sup> (as stated in the last paragraph).

Lord Coke states that "King Edward of that name, before the conquest the 3d *ex immensu legum congerie quas Britanni, Ro-*

<sup>133</sup> 1 Lingard's Engl., p. 297 to 301.

<sup>134</sup> Id., pp. 302, 303.

<sup>135</sup> Id.

<sup>136</sup> Id., p. 303; Turner's Anglo-Saxons, book 6, ch. 14, p. 319.

*mani, Angli et Daci condiderunt, optima quæque selegit ac in unam coegit quam vocari voluit legem communem.*"<sup>137</sup> Lord Coke considers that writs of assize are of great antiquity; he mentions that "the abbot of B. claimed conusans of plea in writs of assize, &c., in the times of King Edward the confessor, and before that time, time out of mind."<sup>138</sup>

In a pamphlet printed in 1649, mentioned in § 6 p. 87 (after the passage there quoted), it is said:

"So likewise, in trials of right by twelve men, our customs agree with the Danish, and in many other particulars which were introduced by the Danes, disused at their expulsion, and revived again by William the conqueror. For, after the massacre of the Danes in this island, King Edward the confessor did again alter their laws; and though he extracted many particulars out of the Danish laws, yet he grafted them upon a new stock and compiled a body of laws, since known by his name, under the protection of which the people then lived."<sup>139</sup>

Mr. Hume, who says much of "the Anglo-Saxon government and manners,"<sup>140</sup> expresses himself as follows:

"The most commendable circumstance of Edward's government was his attention to the administration of justice, and his compiling for that purpose a body of laws, which he collected from the laws of Ethelbert, Ina and Alfred. This compilation, though now lost (for the laws that pass under Edward's name were composed afterwards)<sup>141</sup> was long the object of affection to the English nation."<sup>142</sup>

"Edward the confessor had *Reinbald* his chancellor."—This Edward granted many manors, lands, &c., and franchises to the abbot of Westminster, and endeth his charter thus: *Ad ultimum, cartam istum sigillari jussi et ipse manu mea propria signum crucis impressi, et idoneos testes annotari præcepi*; and amongst those witnesses this you shall find, *Swairdus notarius ad vicem Reinbaldi regii dignitatis cancellarii hanc cartam scripsi et subscripsi*. He had also *Leofric* to his chancellor."<sup>143</sup>

<sup>137</sup> Preface to 3 Rep., XIX, XX.

<sup>138</sup> 2 Inst., 23.

<sup>139</sup> Harl. Miscel., vol. 6, p. 218 and vol. 9, p. 395.

<sup>140</sup> 1 Hume's Engl., Appendix 1, p. 152 to 177 of N. Y. ed., 1850.

<sup>141</sup> Spelm. in verbo Belliva.

<sup>142</sup> 1 Hume's Engl., ch. 3, p. 138.

<sup>143</sup> 4 Inst., 78. As to the year dcccxiii

there may be mistake in the passage wherein Mr. Stubbs is printed as saying: "Reginbaldus, who attests Edward's charter to Waltham (C. D. dcccxiii), is the only person who appears as cancellarius in genuine charters. Leofric, bishop of Crediton, is called chancellor by Florence of Worcester, A. D. 1045." 1 Const. Hist., ch. 11, p. 352.

"The benevolent heart of Edward mourned over the calamities of his people; and he eagerly adopted" an "expedient which seemed likely to remove or to mitigate their sufferings. The Danegelt had now been paid for eight and thirty years; it formed a considerable part of the royal revenue. In 1051 the king resolved to sacrifice this advantage to the relief of the people."—"On another occasion when his nobles had raised a large sum on their vassals, and begged him to accept the free gift of his faithful subjects, he refused the present as extorted from the labour of the poor, and commanded it to be restored to the original contributors."<sup>144</sup>

His piety was sincere; his charities were extensive.<sup>145</sup>

"Edward had vowed to visit the tombs of the apostles at Rome, like his predecessors, Ethelwulf and Canute; but the witan objected to his departure from England as long as he had no heir to the crown. Leo, having consulted the council, absolved the king from his vow, but on the condition that the money which he had collected to defray the expense of his journey should be distributed among the poor, and that out of his yearly income he should found, or re-found, an abbey in honour of St. Peter. This commutation was accepted."

"He preferred the latter course" (refounding or enlarging). "At a little distance from the western gate of London lay what was then an island of the Thames, which from the dense bushes and thickets with which it was covered, received the name of Thorney. There stood a monastery whose origin was carried up to the earliest days of English christianity. There" (it is said) "Sigeberht, the first Christian king of the East Saxons, had begun a foundation in honour of St. Peter, to balance, as it were, the great Minster of St. Paul within the city."<sup>146</sup>—"The church of Saint Peter, from its position with regard to the church of the brother apostle, obtained the name, so familiar and so historical in the ears of every Englishman, of the West Minster."<sup>147</sup>

"On the vigil of Christmas," Edward "was attacked by the fever which ultimately proved fatal. For three days he struggled against the violence of the disease, held his court as usual, and presided with affected cheerfulness at the royal banquets. On the festival of the Innocents (Dec. 28), the day appointed for the dedication of the new church, he was unable to leave his chamber. The ceremony was, however, performed. Editha took the charge of the decorations, and represented the royal founder. But his absence, and the idea of his danger, diffused deep gloom among the thousands who had as-

<sup>144</sup> 1 Lingard's Engl., ch. 6, p. 293.

<sup>145</sup> "The money was given in doles to the poor, and from that moment the tenth part of the receipts from the king's manors were faithfully set apart." *Id.*, p. 284.

<sup>146</sup> 2 Freem. Norm. Conquest, p. 335, of edi. 1873. In note 4 on that page are the words, 'So says Æthelred X Scriptt. 385. Sigebert king of the East Angles, in 635, is mentioned in ch. 2, § 6, p. 43.

<sup>147</sup> *Id.* (2 Freem. Norm. Conquest), 335.

sembled to witness the spectacle. After lingering a week longer, Edward died on the 5th of January, and was buried the following day, with royal pomp, in the church which he had erected.<sup>148</sup>

"The goodness of his heart was adored by his subjects, who lamented his death with tears of undissembled grief."—"He exhibited the interesting spectacle of a king negligent of his private interests, and totally devoted to the welfare of his people."

"He was pious, kind and compassionate; the father of the poor, and the protector of the weak; more willing to give than to receive; and better pleased to pardon than to punish. Under the preceding kings, force generally supplied the place of justice, and the people were impoverished by the rapacity of the sovereign. But Edward enforced the laws of his Saxon predecessors, and disdained the riches which were wrung from the labours of his subjects. Temperate in his diet, unostentatious in his person, pursuing no pleasures but those which his hawks and hounds afforded, he was content with the patrimonial demesnes of the crown; and was able to assert, even after the abolition of that fruitful source of revenue, the Dane-gelt, that he possessed a greater portion of wealth than any of his predecessors had enjoyed."<sup>149</sup>

"The surname of 'the confessor' was given to him from the bull of his canonization, issued by Alexander III, about a century after his decease."<sup>150</sup>

In John Evelyn's diary, under the date of September 16, 1685, is mention of his then majesty (Jac. 2).

"Speaking of *the golden cross and chain taken out of the coffin of St. Edward the Confessor*, at Westminster, by one of the singing men, who, as the scaffolds were taking down after his majesty's coronation, espying a hole in the tomb, and something glisten, put his hand in, and brought it to the Dean and he to the king."<sup>151</sup>

Of this finding, a narrative was printed Feb. 6, 1687-8, and reprinted in 1827.<sup>152</sup>

<sup>148</sup> Id. p. 342. His death was "in the sixty-fifth year of his age and twenty-fifth of his reign." I Hume's Engl., ch. 3, p. 137. I Lingard's Engl., p. 304.

<sup>149</sup> Id., pp. 304, 305.

<sup>150</sup> Id., p. 306.

<sup>151</sup> Evelyn's Memoirs, vol. 3, p. 177, of edi. 1827.

<sup>152</sup> Id. p. 424 to 427.

9. *Of Earl Godwin's son; crowned Jan. 6, 1065-6, as Harold the second; and killed October 14, 1066, in the battle wherein the Normans conquered.*

Edgar the etheling (called Edgar Atheling) was now the last surviving male of the race of Cerdic. But if after Edward's death Edgar's claim was pressed at all, it was not pressed as another's was. It is said "that upon the same day whereon King Edward was buried," Godwin's son, Harold, "set the crown upon his own head, without religious ceremonies, without any solemnities of coronation."<sup>153</sup> As to this there may be mistake in part; the fact may be, and probably is, that the ceremony of coronation was performed by Aldred, the archbishop of York.<sup>154</sup> But there was remarkable haste in the funeral of Edward the confessor, and in the coronation of Harold the second.<sup>155</sup>

Soon there were signs of danger to Harold from his brother Tostig, who had married Judith, a daughter of Baldwin, earl of Flanders<sup>156</sup> and a sister of Matilda, the duchess of Normandy; from the king of Norway, whose assistance Tostig had engaged; and from William, the duke of Normandy. In the last of Harold's battles with Tostig and the king of Norway—that at Stamford bridge, on the Derwent, Sept. 27—there was a total route of the Norwegians; and their king and Tostig were killed. On the 28th or 29th, William of Normandy landed with his army at Pevinsey in Sussex; he marched immediately to Hastings; the neighbourhood of his camp was reached by Harold in the beginning of October; preparations for combat were immediate; the spot selected for it was Senlac (nine miles from Hastings), an eminence opening to the south and

<sup>153</sup> Hayward's *Life of Will. I.*; printed at London in 1613, and reprinted in 1810 in *Harl. Miscel.*, vol. 3, p. 133.

<sup>154</sup> 1 *Lingard's Engl.*, ch. 6, p. 309. "The *election* of Harold" is treated of in 3 *Freem. Norm. Conquest*, p. 21; and appendix C, p. 400 to 411; his *corona-*

*tion* in *Id.* p. 27, and appendix D, p. 411 to 417.

<sup>155</sup> *Id.*; and 3 *Harl. Miscel.*, p. 133.

<sup>156</sup> After Tostig's death she married the son of Azo and Cunegunda (Guelph I or V), from whom the present royal family of England is descended. 1 *Lingard's Engl.*, p. 311 *note*.

covered on the back by an extensive wood.<sup>157</sup> The fourteenth of October was the day appointed for the battle. "Never was fury better governed; never game of death better played."—"The fight continued with very great constancy and courage, and variety of fortune, from seven of the clock in the morning until night."

"King Harold, about the close of the evening, as he was busy in sustaining his army, both with voice and hand, was struck with an arrow through the left eye into his brains, of which wound he presently died. His two brothers, Girth and Leofwin were also slain, and also most of the nobility that were present. So long as the king stood, they stood stoutly both with him and for him and by him; his directions supported them; his brave behaviour breathed fresh boldness and life into them. But his death was a deadly stab to their courage; upon report of his death, they began to waver in resolution."<sup>158</sup>

If the loss could have been repaired, it was not.<sup>159</sup> After Harold was slain in battle "the people chose rather to submit to William and his title than endure the hazard of ruining war, by opposing him, to set up a new king."<sup>160</sup>

<sup>157</sup> *Id.*, ch. 6, p. 307 to 315.

<sup>158</sup> *Life of William I.*, by J. Hayward, printed at London in 1613; reprinted in 3 *Harl. Miscel.*, pp. 143, 144. Harold's "body was buried by his mother at Waltham cross, within the monastery which he had founded." *Id.*, 144; 1 *Turner's Engl.*, ch. 4, p. 82, of *edi.* 1825; 3 *Freem. Norm. Conquest*, p. 343,

to 348, *edi.* 1873; and appendix M M, p. 509 to 516. As to Waltham abbey, see 2 *Id.*, appendix P P, page 452 to 455; and 8 *Dugdale's Engl.*, p. 1508.

<sup>159</sup> Pamphlet in 1647. 6 *Harl. Miscel.*, 101; in 1648, *Id.*, 179.

<sup>160</sup> Hayward's *Life of William I.* 3 *Harl. Miscel.*, 148; Pamphlet of 1690. *Id.*, 459.



## CHAPTER V.

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VIEWS APPLICABLE TO THE PERIOD FROM 449 TO 1066. POLITY OF THE GERMANIC RACE; DEVELOPED ON BRITISH SOIL. PROCESS OF MIGRATION TO, AND CONQUEST OF, BRITAIN BY THE ENGLISH: THEIR INSTITUTIONS BEFORE THE NORMAN CONQUEST. THE FINE ARTS AMONG THEM.

### *1. Polity of the Germanic race; developed on British soil.*

Of "the system which Tacitus saw and described in the Germania,"<sup>1</sup> "the institutions of the Saxons of Germany, long after the conquest of Britain," are deemed the most perfect exponent."<sup>2</sup>

Of the Franks it is stated as "certain that upon the decline of the Roman empire, they inhabited Franconia, a province of Germany, and about the year 413, or according to Davila, 119, invaded France under Pharamond, whom they chose to be their king and leader;" and "before they began their expedition, they held a general assembly, near unto a river named Sala, and there" "enacted laws for government, and amongst the rest one for the exclusion of females from inheriting the crown, which" "came to be denominated the Salick law."<sup>3</sup>

A comparison of Germanic institutions with those in Britain since its occupation by the German race, suggests "the probability that the polity developed by" that "race on British soil is the purest product of their primitive instinct." The polity, so developed "in England, though it may not be older in its monuments than the *Lex Salica*, is" regarded by Professor Stubbs as "more entirely free from Roman influences." He considers that "in England the

<sup>1</sup>*De Situ, moribus et populis Germania.*

<sup>2</sup>1 Stubbs's Const. Hist., ch. 1, p. 11.

<sup>3</sup>Printed in 1697, and reprinted in 10 Harl. Miscel., p. 301, of edi. 1810.

common germs were developed and ripened with the smallest intermixture of foreign elements."

"Not only were all the successive invasions of Britain, which, from the eighth to the eleventh century diversify the history of the island, conducted by nations of common extraction, but, with the exception of ecclesiastical influence, no foreign interference that was not German in origin, was admitted at all. Language,<sup>4</sup> law, custom and religion,<sup>5</sup> preserve their original conformation and colouring. The German element is the paternal element in our system, natural and political."<sup>6</sup>

These views of Mr. Stubbs are quite consistent with the observations of Turner and Mackintosh.

"From the Anglo-Saxons we derive the names of the most ancient officers among us; of the greater part of the divisions of the kingdom, and of almost all our towns and villages. From them also we derive our language; of which the structure, and a majority of its words, much greater than those who have not thought on the subject would at first easily believe, are Saxon. Of sixty-nine words, which make up the Lord's Prayer, there are only five not Saxon;—the best example of the natural bent of our language, and of the words apt to be chosen by those who speak and write it without design. Of eighty-one words in the soliloquy of Hamlet, thirteen only are of Latin origin. Even in a passage of ninety words in Milton, whose diction is more learned than that of any other poet, there are only sixteen Latin words. In four verses of the authorized version of Genesis, which contain about a hundred and thirty words, there are no more than five Latin. In seventy-nine words of Addison, whose perfect taste preserved him from a pedantic or constrained preference for any portion of the language, we find only fifteen Latin."<sup>7</sup>

<sup>4</sup> I Stubbs's Const. Hist., ch. 1, pp. 10, 11; Turner's Anglo-Saxons, appendix, p. 363, *et seq.*, of ed. 1852. Mr. Stubbs remarks that "with the exception of the Gothic Bible of Ulfilas, the Anglo-Saxon remains are the earliest specimens of Germanic language as well as literature, and the development of modern English from the Anglo-Saxon is a fact of science as well as of history." I Const. Hist., ch. 10, pp. 10, 11.

<sup>5</sup> Perhaps as to *religion* there should be a qualification by the words "in a manner," or "in some measure."

<sup>6</sup> I Const. Hist., ch. 1, p. 11.

<sup>7</sup> I Mackintosh's Engl. ch. 2, pp. 76, 77, of Phila. ed., 1830. Mackintosh (*Id.*, p. 77) says: "Dr. Johnson himself, from whose corruptions English style is only recovering, in eighty-seven words of his fine parallel between Dryden and Pope, has found means to introduce no more than twenty-one of Latin derivation;" citing (for examples and materials for calculation) Turner, ii, app. 1. 1828.

In the opinion of Mr. Stubbs, "the development of the Saxons" "was more rapid, and is much more fully illustrated by history, in England than in Germany."<sup>8</sup>

2. *Process of migration to, and conquest of, Britain by the English.*

In England was published in 1647 the first part, and in 1689, the residue of the following paragraph:

Our progenitors, that transplanted themselves from Germany hither, did not commix themselves with the ancient inhabitants of this country, the Britons, as other colonies did with the natives in those places where they came, but totally expelling them, they took the sole possession of the land to themselves, thereby preserving their blood, laws and language incorrupted."<sup>9</sup> "The original of the subjects' liberty was by those our forefathers brought out of Germany: where as Tacitus," (de Morib. Germ., sect. 3 and 6,) "reports, *nec regibus infinita aut libera potestas*; their kings had no absolute, but limited power, and all weighty matters were dispatched by general meetings of all the estates. Who sees not here the antiquity of our liberties and frame of government? So they were governed in Germany, and so here, to this day, for by transplanting themselves they changed their soil, not their manners and government."<sup>10</sup>

Consistent with these views (to a considerable extent), are those of Sir John Fortescue Aland,<sup>11</sup> Mr. Turner,<sup>12</sup> Dr. Lingard,<sup>13</sup> and Professor Stubbs.<sup>14</sup> The latter says:

"The English are not aboriginal, that is, they are not identical with the race that occupied their home at the dawn of history. They are people of German descent in the main constituents of blood, character and language, but most especially in connection with our subject, in the possession of the elements of primitive German civilization and the common germs of German institutions."—"The consensus of historians, placing the conquest and colonization of Britain by nations of German origin between the middle of the

<sup>8</sup> 1 Stubbs's Const. Hist., ch. 3, pp. 40, 41.

<sup>9</sup> Reprinted in Harl. Miscel., vol. 6, p. 97, of edi. 1810.

<sup>10</sup> Id., p. 345, of vol. 9.

<sup>11</sup> Preface to edi. in 1714 of Fortescue on Monarchy.

<sup>12</sup> Turner's Engl., part 6, ch. 1, pp. 352, 353, of edi. 1825; Hist. Anglo-Saxons,

book 3, ch. 5, p. 277, of vol. 1, edi. 1852; *Id.*, book 8, ch. 8, p. 208, of vol. 3.

<sup>13</sup> 1. Lingard's Engl. ch. 2, pp. 72, 73, of Boston edi. 1852. In ch. 2, p. 61, he mentions the origin and character of the Anglo-Saxons.

<sup>14</sup> 1 Stubbs's Const. Hist., pp. 7, 8, pp. 70, 71.

fifth and the end of the sixth century is confirmed by the evidence of a continuous series of monuments. These show the unbroken possession of the land thus occupied, and the growth of the language and institutions thus introduced."—"The four great states of Western Christendom—England, France, Spain and Germany—owe the leading principles which are worked out in their constitutional history to the same source."<sup>15</sup>

In Britain the new dominion was not accepted. "The Britons fled from their homes; whom the sword spared, famine and pestilence devoured. The few that remained either refused or failed altogether to civilize the conquerors."—"The cities went to ruin; Christianity became extinct and all culture with it. There were still Roman roads leading to the walls and towers of empty cities: the Roman divisions of the land were conspicuous; the entrenched and fortified camps, the great villas of the princely families, churches and burial places; but they were become before the days of Bede mere haunted ruins."—"It is not to be supposed that this desolation was uniform; in some of the cities there were probably elements of continuous life; London, the mart of the merchants, York, the capital of the north, and some others, have a continuous political existence."<sup>16</sup>

"Conquest under the circumstances compelled colonization and migration. The wives and families were necessary to the comfort and continued existence of the settlements. It was not only that the attitude of the Britons forbade intermarriages; the Saxons, as all testimony has shewn, declined the connubium of foreign races."—"The invaders come in families and kindreds and in the full organization of their tribes; the three ranks of men, the noble, the freeman and the læt; even the slaves are not left behind."<sup>17</sup>

"The tribe was as complete when it had removed to Kent as when it stayed in Jutland; the magistrate was the ruler of the tribe, not of the soil; the divisions were those of the folk and the host, not of the land; the laws were the usages of the nation, not of the territory."<sup>18</sup>

"On their arrival in Britain, then, the Saxons had their threefold division of ranks: they had the association of the township and that of the *pagus*, whether or no it bore the name of hundred; some remains of the mark system of land ownership and cultivation; the principle of election to public functions; and the tie of the kindred still preserving its legal rights and duties."—"Even if old ties were, more than we need suppose likely, broken in the process of migration, the names, functions and rights of the magistrates, the principles of customary law and local organization, survived and took new root and grew. But, in the second place, the process of migration and conquest must have produced such changes as are traceable."—"The Saxons had no kings at home, but they create kingdoms in Britain."<sup>19</sup>—According to the chronicle, the Brito-Welsh in A. D. 443 invited to Britain the Ethelings of the Angles; in A. D. 449, under

<sup>15</sup> Ch. I, p. 2.

<sup>16</sup> Ch. 4, p. 61.

<sup>17</sup> Id., ch. 4, § 31, p. 64.

<sup>18</sup> Id., p. 65.

<sup>19</sup> Id., pp. 65, 66.

two *heretogas*, Hengist and Horsa, the strangers came; in A. D. 455, Hengist and Aesc, his son, came to the kingdom; in A. D. 495, 'came two *ealdormen* to Britain, *Cerdic* and *Cynric*;' in A. D. 519, they became kings of the West Saxons. In each case the erection of the throne was probably the result of some great victory, or of the permanent securing of a definite territory, but the institution was not a transference of British royalty: the new kings are kings of the nations which they had led to conquest, not of those they had conquered."<sup>20</sup>

### 3. *General principles of the Anglo-Saxon government.*

Observations upon the Anglo-Saxon government have been made by Mr. Hume,<sup>21</sup> Dr. Lingard<sup>22</sup> and Mr. Turner.<sup>23</sup> The latter says:

"It was reserved for those whom we unjustly call barbarians, the descendants of the Scythian, Gothic or Teutonic nomades, to invent, and to reduce to practice, a form of monarchy, under the name of kings, with powers so great, yet so limited; so superior and independent in the theory of law, and yet so subordinate to it and so governed by it; so majestic, yet so popular; so dignified, yet so watched; so intrusted, yet so criticised; so powerful, yet so counter-acted; so honoured, yet so counselled; so wealthy, yet so dependent"—"that all the good which sovereignty can impart is enjoyed largely by the nations whom they swayed, with as few as possible of the evils which continued power must always tend to occasion."<sup>24</sup>

Those who look below the surface of forms and institutions will discover that the spirit of equity and freedom breathed into our government by the Saxons has never entirely departed from us.<sup>25</sup>

### 4. *Status of the Anglo-Saxon population—the freemen and the slaves.*

Mr. Turner has given a "sketch of the Anglo-Saxon population."<sup>26</sup>

<sup>20</sup> Id., § 32, pp. 66, 67.

<sup>21</sup> I Hume's Engl., appendix I, p. 152.

<sup>22</sup> I Lingard's Engl., ch. 7, p. 320.

<sup>23</sup> "Great general principles of their constitution and laws" are stated in Hist. of Anglo-Saxons, book 8, ch. 6, p. 195, to 198, of vol. 3. "Their official and other dignities" are the subject of ch. 7, in Id., p. 199 to 206; and "some features of" their "political state" are treated of in ch. 8, Id., p. 207 to 216.

<sup>24</sup> Id. book 8, ch. 3, p. 141. Mr. Tur-

ner, speaking of "the prerogatives and rights of the Anglo-Saxon *cyning*," says, "they were such as had become established by law or custom, and could be as little exceeded by the sovereign as withheld by his people. They were not arbitrary privileges of an unknown extent." Id., p. 153.

<sup>25</sup> I Mackintosh's Engl., ch. 2, p. 78. of edi. 1830.

<sup>26</sup> Hist. Anglo-Saxons, book 8, ch. 9, p. 217 *et. seq.* of vol. III.

The Cyning, or king, has been alluded to.<sup>27</sup> In the earliest periods of Anglo-Saxon history we find him and all the four orders of noble, free, freed and servile.<sup>28</sup> "The existence of the classes of nobles, freemen and læts, among the conquerors, would seem further to imply the existence of larger and smaller private estates."<sup>29</sup>

"Slavery in the strictest sense, was an early if not a primitive institution of the race. Tacitus knew that the slave had no remedy against the violence of his master; even his life could be taken with impunity. And in the earliest English laws such slaves are found."<sup>30</sup> Mr. Turner considers that "the great bulk of the Anglo-Saxon population was in a servile state and therefore without any constitutional rights."<sup>31</sup>

<sup>27</sup> In the last note of the preceding section.

<sup>28</sup> Turner's Anglo-Saxons, book 8, ch. 3, pp. 145, 148 of vol. III.

<sup>29</sup> Stubbs's Const. Hist., ch. 5, p. 73.

<sup>30</sup> Mr. Stubbs says, "The *theow* or slave simple, whether wealh—that is, of British extraction, captured or purchased,—or of the common German stock descended from the slaves of the first colonists; the *esne* or slave who works for hire; the *wite-theow* who is reduced to slavery because he cannot pay his debts; the *man* who has sold himself or his children to avoid starvation; the slave who works in his master's house and the slave who works on the farm: all are regarded as a part of the stock of their owner, and are valued according to their importance to him; their offences against a third person he must answer for as for the mischief done by his cattle; they have no *wergild*, no credibility, no legal rights; wrongs done to them are regarded as done to their master. In some respects the practice of the law is better than the theory; the slave is entitled to his two loaves a day, and his holy days are secured to him; he can purchase his freedom with savings, which in some unexplained way the law has allowed him to keep, and the spirit-

ual law can enforce a penance on the master for ill-treating him. But his status descends to his children; all his posterity, unless the chain is broken by emancipation, are born slaves." 1 Const. Hist., ch. 5, pp. 78, 79.

<sup>31</sup> He says: "All the villani, servi, bordarii, cōscetæ, cotarii and coliberti, esnes and theows; that is all the working agricultural population, and most of those who occupied the station of our present small farmers; and in the burghs and cities, all those who were what is called the men or low vassals of other persons, analogous to our inferior artisans and mechanics and small tradesmen, were the property of their respective lords, and with no more political rights than the cattle and furniture with which we find them repeatedly classed and transferred. Two-thirds at least, more probably three-fourths, of the Anglo-Saxon population were originally in this state, till voluntary or purchased emancipations and the effects of war and invasion, gradually increased the numbers of the free." "The constitutional principle as to the servile population of the country, seems to have been, that it was represented by its masters in the national council, like the rest of their property." Hist. of

The class of the free—including all having legal rights—may be divided into those owning land—who were of various degrees of wealth and dignity—and those owning none.<sup>32</sup>

*5. Gradual process of change from the personal to the territorial organization.*

Mr. *Stubbs* describes the gradual process of change—"from the personal to the territorial organization; from a state of things in which personal freedom and political right were the leading ideas, to one in which personal freedom and political right had become so much bound up with the relations created by the possession of land as to be actually subservient to it."<sup>33</sup>—"The land had been settled by tribes of kinsmen, under rulers who, as kings, acquired the headship of the kin as well as the command of the host. Whilst the kin of the kings subsisted, and the original landmarks were preserved, neither religion nor common law, nor even common subjection, sufficed to weld the incoherent mass."<sup>34</sup>—"Until after the Danish wars, provincial royalty remained, and the cohesion of the mass was maintained only by the necessities of common defence."<sup>35</sup>—"The process of natural selection was in constant working. It is best exemplified in the gradual formation of the seven kingdoms and in their final union under Wessex: the heptarchic king was as much stronger than the tribal king, as the king of united England was stronger than the heptarchic king."<sup>36</sup> "If the extinction of smaller royalties

Anglo-Saxons, book 8, ch. 4, p. 164 and ch. 9, p. 227 of vol. III. As to the difference between those in such servile state and the *Coloni* of the Roman empire, see *Id.*, appendix to note on p. 505 of vol. II.

<sup>32</sup> I *Stubbs's Const. Hist.*, ch. 5, pp. 79, 80. Mr. Turner says: "It was only to the freemen of the counties, or as we call them, freeholders; and to the free inhabitants of the burghs or boroughs, and cities, whom we now call burgesses and citizens, that any legislative representation can have applied in the Anglo-

Saxon times." Turner's *Hist. of Anglo-Saxons*, book 8, ch. 4, p. 164.

<sup>33</sup> I *Const. Hist.*, ch. 7, p. 166.

<sup>34</sup> "And it may have been the consciousness of this which hindered the victorious kings from suppressing royalty altogether in the kingdoms they subdued; the vassal kings either became insignificant, sinking into *eorls* and hereditary ealdormen, or gradually died out." *Id.* p. 170.

<sup>35</sup> *Id.* p. 170.

<sup>36</sup> *Id.* pp. 170, 171.

opened the way for permanent consolidation, the long struggle with the Danes prevented that tendency from being counteracted." It could not fail to result that royalty itself was strengthened.<sup>37</sup>

"The progress of the Anglo-Saxon system, from the condition in which its whole organization depends on personal relations to that in which everything depends on territorial ones, is marked at each step by some change in the royal power."<sup>38</sup>

6. *Of the territorial divisions into townships (or tythings), hundreas and shires; and the officers and courts thereof, especially of the shire-moot.*

The unit of the constitutional machinery is the township, the *villata* or *vicus*<sup>39</sup> The community, in its earlier stage, may have been of free and kindred cultivators, or what is called the mark.<sup>40</sup> It is to this system that the origin of some part of the machinery of local courts of the manor and township which still exist may be traced.<sup>41</sup> The historical township is the body of alodial owners who have advanced beyond the stage of land-community, retaining many vestiges of that organization; or the body of tenants of a lord who regulates them, or allows them to regulate themselves, on principles derived therefrom. In a further stage the township appears in its ecclesiastical form, as the parish or portion of a parish, the district assigned to a church or priest, to whom its ecclesiastical dues, and generally also its tithes are paid.<sup>42</sup> Besides this, the township has a share in the creation of the later territorial jurisdiction of the manor.<sup>43</sup> In these forms and relations, the townsmen retain their right of meeting and exercising some sorts of jurisdiction, although until the criminal jurisdiction in court leet comes to the lords of manors by special

<sup>37</sup> I Stubb's Const. Hist. ch. 7, pp. 173, 174.

<sup>38</sup> "The growth of the royal power was theoretical rather than practical; what it gained on one side it lost on another. The king became the source of justice, the lord and patron of his people, the owner of the public lands; but he had almost immediately to part with the substantial exercise of the powers so appro-

priated. By the grants of land constantly increasing in number, the royal demesne was continually diminished, and the diminution of royal demesne made the taxation of the people the only available means of meeting public emergencies." Id. p. 207.

<sup>39</sup> I Stubb's Const. Hist., p. 82.

<sup>40</sup> Id. p. 83.

<sup>41</sup> Id. p. 84.

<sup>42</sup> Id. p. 85.

<sup>43</sup> Id. 89.



grant, their participation in such matters is of the character simply of police-agency.<sup>44</sup>

The union of a number of townships for the purpose of judicial administration, peace and defence, formed what was known as the hundred or wapentake; a district answering to the *pagus* of Tacitus, the *hærred* of Scandinavia, the *huntari* or *gau* of Germany.<sup>45</sup> The court (the hundred-gemot or wapentake court) was held every month. It was attended by the lords of lands within the hundred, or their stewards representing them, and by the parish priest, the reeve and four best men of each township. The judges of the court were the whole body of suitors, the freeholders answering to the 'rachim burgii' of the Franks.<sup>46</sup> The court was entitled to declare folk right in every suit; its jurisdiction was criminal as well as civil, and voluntary as well as contentious.<sup>47</sup>

As was the case with the township,<sup>48</sup> the organization of the hundred lent itself readily to the judicial, ecclesiastical and fiscal developments of later times. The criminal jurisdiction of the hundred is perpetuated in the manorial court leet. On the institution of the frank pledge, a hundred court was held twice a year to ascertain the observance of the law. This became the business of the sheriff's tourn of later times, held twice a year in the octave of Easter and Michaelmas in different parts of the county. It was the great court leet, as the old hundred court was the court baron of the hundred, and the county court that of the shire: the distinction of origin being maintained in the principle that in the courts baron,<sup>49</sup> whether in the

<sup>44</sup> Id. 90.

<sup>45</sup> Id. 96, 99.

<sup>46</sup> But as various inconveniences might arise from the uncertainty of the number, qualifications or attendance of the whole, a representative body of twelve seems to have been instituted as a judicial committee of the court. Id. 102, 103.

<sup>47</sup> Id. 104.

<sup>48</sup> Id. 91.

<sup>49</sup> Lord Coke says, "Called a court-baron because among the laws of King Edward, the confessor, it is said: '*Barones verò qui suam habent curiam de suis hominibus*,' &c. Co. Lit., 58. Further, he

says that the first kings of this realm had all the lands of England in demesne and *les grand manors et royalties* they reserved to themselves and of the remnant, they, for the defence of the realm enfeoffed the barons of the realm with such jurisdiction as the court-baron now hath, and instituted the freeholders to be judges of the court-baron. Co. Lit. 58. He observes that in those ancient laws under the name of barons were comprised all the nobility. Id.

manor, the hundred or the shire, the suitors were the judges, whilst it was otherwise in the courts leet and sheriff's tourn among them, the steward being judge in the leet, the sheriff judge in the tourn.<sup>50</sup>

Lord *Coke* states that "the sheriff was deputy of the consul or earl; and therefore the Romans called him vice-consul, as we, at this day, call him *vice-comes*;" and further that the sheriff in the Romans time, and before, was a minister to the king's courts of law and justice, and had then a court of his own, which was the county court, then called *curia consulatus*, as appeareth by these words, *ipsius vices supplebat in jure et in foro*."<sup>51</sup> According to Mr. *Stubbs*, the sheriff, or scir gerefa, the scirman of the laws of Ini was the king's steward and judicial president of the shire, the administrator of the royal demesne, and executor of the law. His sphere of jurisdiction was distinctly a single shire, although after the conquest, for a long period, the shires were administered in pairs.<sup>52</sup> The sheriff held the shiremoot, according to Edgar's law, twice in the year. Although the ealdorman and bishop sat in it to declare the law, secular and spiritual, the sheriff was the constituting officer. The suit-

<sup>50</sup> *Stubbs's Const. Hist. of Engl.*, vol. I, ch. 5. pp. 104, 105. Lord *Coke* observes that "many times *turn vice-comitis* is expressed under the name of *curia comitatus*, because it extended through the whole county." 2 Inst. 69. He considers that "truly did H. I. say, *sicut antiqua fuerat institutione formatum*: for these courts of the tourn, and of the county and of the leet or view of frank pledge" "were very ancient; for of the tourn you shall read amongst the laws of King Edward," before the conquest. 2 Inst., 70. Citing from those laws 1 c. 11, fol. 51, he says, "Hereby it appeareth that common pleas between party and party were holden in the county court every month." Id. 70.

<sup>51</sup> A passage cited by Lord *Coke* as among the laws of Edward the confessor, seems to a learned annotator, "rather a remark by the copier or translator of the

law, than a part of the law itself." But whether the passage is part of the law or not, "the comparison it draws of the Roman denominations of their territorial government and officers in Britain with those of the Saxons, seems to" the annotator "quite imaginary." He adds, "at least I am not able to find any trace of authority to prove such an use or application of the words '*consulatus*' consul and *vice-comes* amongst the Romans whilst Britain was a part of their empire as this extract supposes." Note 20 of Hargr. and Butl. on Co. Lit. 168 a.

<sup>52</sup> As a rule, the sheriff was, as a royal officer, nominated by the king; the ealdorman as a national one, by the king and witan. The sheriff as well as the ealdorman was entitled to a share of the profits of administration. 1 *Stubbs's Const. Hist.*, ch. 5, p. 113.

ors were the same as those of the hundred court: all lords of lands, all public officers, and from every township the reeve and four men.<sup>53</sup>

The name scir or shire which marks the division immediately superior to the hundred, merely means a sub-division, or share of a larger whole, and was early used in connection with an official name to designate the territorial sphere appointed to the particular magistracy denoted by that name.<sup>54</sup> The historical shires, or counties, owe their origin to different causes.<sup>55</sup> Each shire, or county, contained a number of hundreds.<sup>56</sup> Its organization was of much the same character as that of the hundred, but it was under an ealdorman, who sat with the sheriff and bishop in the folkmoot; though it was not the rule for every shire to have *to itself* an ealdorman, as it had its sheriff.<sup>57</sup>

Besides the judicial power of the shiremoot,<sup>58</sup> which, like the hun-

<sup>53</sup> "Here again the suitors were the judges; but the twelve senior thegns appear in the county court as well as in the hundred, and on the institution of the grand jury, present the report of the hundred. Thus limited, the authority of the sheriff was rather that of a chairman or moderator than that of a judge." Id. pp 114, 115.

<sup>54</sup> Stubbs's Const. Hist., ch. 5, p. 109.

<sup>55</sup> Co. Lit. 168 *a*, and notes 20 and 22 of Hargr. and Butl.; also 2 Inst. 71. "The arrangement of the whole kingdom in shires is of course a work which could not be completed until it was permanently united under Edgar; the existing sub-divisions of southern England are all traceable back to his day at the latest; the northern counties have undergone some change since the conquest, although the new lines have been drawn on older landmarks." Id. 110.

<sup>56</sup> Id. 111.

<sup>57</sup> The title of ealdorman is much older than the existing division of shires. The ealdorman received a third part of the profits of the jurisdiction and com-

manded the military force of the whole division. It is said that he (the princeps of Tacitus, and princeps or satrapa, or sub-regulus of Bede, the *dux* of the latin chroniclers and the *comes* of the Normans) was originally elected in the general assembly of the nation, and down to the Norman Conquest, even when hereditary succession had become almost the rule, his nomination required the consent of the king and the witenagemot. Id. 111 to 113. But the election to this office was regulated more by the king's favour and by hereditary claims than by a substantive selection, except in a few extraordinary cases. Id., ch. 6, p. 140. The use of the word ealdorman was afterwards superseded. Id., ch. 5, p. 118. The title of earl had begun to supplant it in the reign of Ethelred. Id., ch. 6, p. 160. See also Co. Lit. 168 *a*, and note 22 of Hargr. and Butl.

<sup>58</sup> Mr. Turner gives an account of "a shire-gemot at Aylston in Canute's days," "composed of a bishop, an ealdorman, the son of an ealdorman; of two persons who came with the king's message

dred, was competent to declare folkright in every suit, some shadow of legislative authority seems to have remained to it in the time of Athelstan.<sup>59</sup> The shiremoot, as a folkmoot, is viewed by Mr. Stubbs as "a monument of the original independence of the population which it represents." He remarks that "if the shire be the ancient under-kingdom, or the district whose administrative system is created in imitation of that of the under-kingdom, the shiremoot is the folkmoot in a double sense, not merely the popular court of the district, but the chief council of the ancient nation who possessed that district in independence, the witenagemot of the pre-heptarchic kingdom."<sup>60</sup>

"In the maintenance of provincial courts and armies was inherent the maintenance of ancient liberty."<sup>61</sup>—"In the preservation of the old forms,—embracing 'the representation of the township in the court of the hundred and that of the hundred in the court of the shire'—"remained the seats of future liberties."—"They were the humble discipline by which a down-trodden people were schooled to act together in small things until the time came when they could act together for great ones."<sup>62</sup>

7. *Of the witenagemot or assembly of the wise—the supreme council of the nation; its legislative and judicial power.*

The *civitas* or *populus* of Tacitus, the union of several *pagi*, is in

or writ; the sheriff or scir-gereffa; three other men, and all the thegns in Herefordshire." Turner's *Htst. of Anglo-Saxons*, appendix 3, ch. 7, p. 457 of vol. II. Further he states that "sometimes a gemot was convened from eight hundreds and sometimes from three. On one occasion, the ealdorman of Ely held a plea with a whole hundred below the cemetery at the north gate of the monastery; at another time a gemot of two hundreds was held at the north door of the monastery." *Id.*, p. 458, *et. seq.* As to law suits about land, see *Id.*, appendix 4, ch. 6, p. 499.

<sup>59</sup> 1 Stubbs's *Const. Hist.*, ch. 5, p. 115.

<sup>60</sup> *Id.*, p. 116. The 5th chapter of Mr. Stubbs concludes with the observation that "there was no intermediate organization between the shire with its folk-moot and the central one of the kingdom with its witenagemot." *Id.*, p. 118.

<sup>61</sup> 1 Stubbs's *Const. Hist.*, ch. 7, p. 209. "The warriors of the shire" "fought as men of the shire under the ealdorman or his officer."—"In the local courts the old spirit of freedom found room. The forms were the same, whether the king's gereffa or the lord's steward called them together; the hundred retained its peace, the township its customs." *Id.* pp. 209, 210.

<sup>62</sup> *Id.*, p. 210.

Anglo-Saxon history, the rice or kingdom; and its council, the *concilium principum*, is the witena-gemot or assembly of the wise. This is the supreme council of the nation, whether the nation be Kent or Mercia, as in the earlier, or the whole *gens Anglorum et Saxonum*, as in the later history.<sup>63</sup>

The character of this national council testifies to its history as a later development than the lower courts, and as a consequence of the institution of royalty.<sup>64</sup> So long as the heptarchic kingdoms lasted, each having its own witena-gemot, there was no attempt at general organization even for cases of the greatest emergency, except the ecclesiastical.<sup>65</sup>

Although the *gens Anglorum* had learned to recognize itself under one collective name as early as the time of Augustine, it was only on the ancient lines that any power of organization was developed until the church was strong enough to form a national union."<sup>66</sup>

"Many provisions are found in the canons of national and even provincial councils, which relate to the temporal constitution of the state. Thus one held at Calcuith (an unknown place in England), in 787, enacted that none but legitimate princes should be raised to the throne, and not such as were engendered in adultery or incest."—"Although this synod was strictly ecclesiastical, being summoned by the pope's legate, yet the kings of Mercia and Northumberland, with many of their nobles, confirmed the canons by their signature."

<sup>63</sup> Stubbs's Const. Hist., ch. 6, p. 119; Turner's Hist. of Anglo-Saxons, book 8, ch. 4, p. 156 of vol. III. "They were petitioned and they legislated; and the dom boc or laws of every Anglo-Saxon reign that has survived to us, contains" (Mr. Turner thinks) "some improvements on the preceding." Id., p. 158. "The constitution of the witena-gemot" is treated of in 1 Freem. Norm. Conq., p. 68; and *appendix* Q, p. 399 to 401, *edi.* 1873.

<sup>64</sup> The folk moot or popular assembly of the shire, is a representative body to a certain extent: it is attended by the representatives of the hundreds and

townships, and has a representative body of witnesses to give validity to the acts that are executed by it. If each shire represented a complete kingdom, the shire moot would give a complete representative system existing in each kingdom. But as the small kingdoms coalesced or were united by conquest, it does not seem to have been thought necessary to extend the system; the council of the aggregated state is not a folk moot, but a witena gemot." 1 Stubbs's Const. Hist., ch. 6, p. 119.

<sup>65</sup> Id., 121.

<sup>66</sup> Id. p. 122.

Such is the statement of Mr. Hallam.<sup>67</sup> Mr. Stubbs says,

"The kings met occasionally for alliance or for arbitration; for some great purpose, such as the choice of a primate; but the nation met only in the ecclesiastical councils, which were held with some frequency, from the days of Theodore to those of Athelstan, quite apart from and independently of the witena-gemots of the several states."<sup>68</sup>

The members of the witena-gemot were the wise men, the *sapientes*, witan; the king, sometimes accompanied by his wife and sons; the bishops of the kingdom, the ealdormen of the shires or provinces, and a number of the king's friends and dependents.<sup>69</sup>

<sup>67</sup> Hall. Mid. Ages, ch. 7, p. 411, of vol. 1, Phila. edi., 1824. Mr. Hallam says: "The bishops acquired and retained a great part of their ascendancy by a very respectable instrument of power, intellectual superiority. They alone were acquainted with the art of writing; and they were entrusted with political correspondence and with the framing of the laws. They alone knew the elements of a few sciences; and the education of royal families devolved upon them as a necessary duty. In the fall of Rome, their influence upon the barbarians wore down the asperities of conquest and saved the provincials half the shock of that tremendous revolution. *As captive Greece is said to have subdued her Roman conqueror, so Rome, in her own turn of servitude, cast the fetters of a moral captivity upon the fierce invaders of the north.* Chiefly through the exertions of the bishops, whose ambition may be forgiven for its effects, her religion, her language, in part even her laws, were transplanted into the courts of Paris and Toledo, which became a degree less barbarous by imitation." Id., p. 412; citing Schmidt, t i, p. 365.

<sup>68</sup> "As occasionally the kings, and frequently the ealdormen, of different kingdoms attended these assemblies, and as they were, like other courts useful for

the witnessing of acts which required powerful attestation and general promulgation, the nation learned from them the benefit of common action. Another powerful help in the same direction must have been the ascendancy, during the whole of that period, of some one great prince, who, by war or alliances, exercised an overwhelming influence over the rest. Such a position was occupied, after the middle of the seventh century, by the kings of Northumbria, during the eighth by those of Mercia, and after the rise of the West Saxon power, by Egbert and his successors. But the existence of this hegemony, whether or no its possessor bore the title of Bretwalda, was not accompanied by unity of organization, or even by any act of confederation." 1 Stubbs's Const. Hist., ch. 6, p. 122.

<sup>69</sup> Id., 124. That the bishops, abbots, eorles, ealdormen and those who bore the title which was latinised into *dux*, *princeps*, &c., were parts of the great national council, is indisputable, from the language of the laws and the numerous charters which they signed. It is as manifest that others besides these higher nobles also attended it; and that these were thegns or *ministri*, *milites* and several who are mentioned in the charters without any designation of legal rank.

Mr. Turner mentions an incident to shew that for some who would sit among the witan, nobility alone was not a sufficient qualification, but forty hides of land were indispensable.<sup>70</sup>

At the summons of the king the witan assembled at London, or such other place, and at such time, as was designated.<sup>71</sup> The king usually presided at the witenagemots; and sometimes he addressed them.<sup>72</sup>

The witan appear to have had a part in providing military force, making treaties,<sup>73</sup> and transacting other business.<sup>74</sup> The clergy were

Turner's Hist. of Anglo-Saxons, book 8, ch. 4, p. 162, and p. 168 to 184, of vol. 3. Mr. Stubbs observes that "the whole tale of the bishops and ealdormen are easily identified, but the number of *ministri* is variable, and the abbots form occasionally a formidable addition. In a witenagemot held at Luton in November, A. D. 931, were the two archbishops, two Welsh princes, seventeen bishops, fifteen ealdormen, five abbots, and fifty-nine ministri. In another, that of Winchester, of A. D. 934, were present the two archbishops, four Welsh kings, seventeen bishops, four abbots, twelve ealdormen and fifty-two ministri. These are perhaps the fullest extant lists of Edgar's witenagemots; the one of A. D. 966, contained the king's mother, two archbishops, seven bishops, five ealdormen and fifteen ministri; and this is a fair specimen of the usual proportion. It is clear that as the feudal principle grew stronger, the number of king's thegns must have largely increased, and as their power became preponderant in the assembly, the royal authority became supreme in the country at large; the office of ealdorman also began at this period to be held chiefly by persons connected with the king's kin." 1 Stubbs's Const. Hist., pp. 125, 126.

<sup>70</sup> Guddmund desired in matrimony the daughter of a great man, but because he had not the lordship of forty hides of

land, he could not, though noble, be reckoned among the proceres; and therefore she refused him. He went to his brother, the abbot of Ely, complaining of his misfortune. The abbot fraudulently gave him possessions of the monastery sufficient to make up the deficiency. 3 Gale's Script., p. 513, cited in Turner's Hist. of Anglo-Saxons, book 8, ch. 4, p. 184, of vol. 3.

<sup>71</sup> The times of their meeting seem to have been usually the great festivals of the church, as Christmas, Easter and Whitsuntide; and of these Easter is more frequently mentioned. But their meetings were not confined to these seasons. There is mention of annual and more frequent meetings, but not of annual elections. Id., ch. 5., pp. 186, 187.

<sup>72</sup> Id., pp. 187, 188.

<sup>73</sup> Turner's Hist. of Anglo Saxons, book 8, ch. 5, pp. 188, 189, of vol. 3. Not the least important part of the laws of Alfred and Edward are in the form of treaty with the East Anglian Danes. 1 Stubbs's Const. Hist., ch. 7, p. 195.

<sup>74</sup> Bede gives an account of the Northumbrian council which received christianity, and represents the king as consulting his princes and counsellors one by one; each declares his mind; and the king decides accordingly. Eddius describes the assemblies in which Wilfred was banished and recalled; accusation, defence and sentence fall into their

no doubt very influential, and the great ealdormen, if we may judge by their action under Edred and Edwy, were not less independent.<sup>76</sup> No business of any importance could be transacted by the king in which the witan had not, in theory at least, a consultative voice.<sup>76</sup> It is said that, until the reign of Henry II, there is a want of historical data as to deliberations in which the king does not get his own way.<sup>77</sup>

Yet the king never legislates by his own ordinance. In the form of enactment no change is perceptible. Ethelred and Canute invariably express the counsel and consent of the wise men of the nation to their promulgation of the laws, just as Ini and Alfred had done.<sup>78</sup>

The formula "by which the co-operation of the witenagemot was expressed, is definite and distinct. The laws of Ini are enacted 'with the counsel and teaching of the bishops, with all the ealdormen and the most distinguished witan of the nation, and with a large gathering of God's servants; those of Wihtræd'<sup>79</sup> are decreed 'by the great men, with the suffrages of all as an addition to the lawful customs of the Kentish people.' Alfred issues his code with the counsel and consent of his witan; Athelstan writes to the reeves with the counsel of the bishops; at Exeter the witan decree with the counsel of the king, and the king with theirs. Edmund, before he legislates, has deliberated with the counsel of his witan, both ecclesiastical and secular. Edgar ordains with the counsel of his witan in praise of God and in honour of himself, and for the behoof of all the people. Ethelred and his witan issue ordinances at Woodstock; Canute at Winchester with the counsel of his witan."<sup>80</sup>

The codes are in fact not so much the introductions of new principles as the declarations of the customs or common law of the race, dating from far beyond the existence of written record, preserved in the memories of the wise, and kept alive, for the most part, in constant general experience. Although it may be that when the knowledge of law has become professional, or when, under new influences,

regular order; the bishops and ealdormen speak, and the king, or ruling ealdorman pronounces the determination, '*hæc est voluntas regis et principum ejus.*' Id., 126. Further, as to impeaching and outlawing or banishing, see Turner's Hist. of Anglo-Saxons, book 8, ch. 5. pp. 189, 190, of vol. 3.

<sup>76</sup> I Stubbs's Const. Hist., 127.

<sup>76</sup> Id., 133. <sup>77</sup> Id., 127.

<sup>78</sup> Id., ch. vii, p. 194.

<sup>79</sup> He was king of Kent, and died in 725, after a reign of almost 34 years. Henry of Huntingdon, book 4. p. 120. His laws are in Wilk. Leg. Saxon. p. 12.

<sup>80</sup> I Stubbs's Const. Hist., ch. vi, pp. 127, 128.



indigenous customs are becoming obsolete, they are written down in books, yet Mr. *Stubbs* thinks, "as a rule, it may be said that a publication of laws is the result of some political change or series of changes; so that the very act of legislation implies some crisis in the history of the legislator."<sup>81</sup>

The laws in the enactment of which the witan joins are not merely secular.<sup>82</sup> It was, further, a court of justice, although only in the last resort, or in cases in which the parties concerned were amenable to no other than the royal jurisdiction.<sup>83</sup> They decided suits and tried criminals.<sup>84</sup>

8. *The ancient referendarius of the Merovingian succeeded by the chancellor of the Karolingian sovereigns. Whence the English Chancellor derives his name and function. Names of English chancellors before the Norman Conquest. Also of the Royal Seal.*

The Merovingians—the first dynasty of Frankish kings which

<sup>81</sup> Id., ch. vii, p. 194. P. 259 of Francklin's Annals, and p. xviii to xxiv of the preface to Fortescue on Monarchy (edi. 1714) may be examined in connection with the observations of Mr. *Stubbs*. In his opinion, "the laws of Ethelbert of Kent were the immediate result of the conversion; those of Wihtræd and Ini of the changes which a century of church organization made necessary in that kingdom and in Wessex. The codes of Alfred and Edgar are the legislation which the consolidation of the several earlier kingdoms under the West Saxon house demanded, the former for Wessex, Kent and Mercia, the latter for the whole of England."—"The laws of Canute are the enunciation, with the confirmation of the conqueror, now the elected king, of the legislation which he had promised to preserve to the people who accepted him. Most of the shorter laws are of the nature of amendments." Const. Hist. of Engl., vol. 1, ch. vii, pp. 194, 195.

<sup>82</sup> Turner's Hist. of Anglo-Saxons, book 8, ch. 5, pp. 190, 191. The ecclesiastical legislation of Ini, Alfred, Ethelred and Canute is, equally with the temporal, transacted with the counsel of the witan. 1 *Stubbs's Const. Hist.*, 129. "Amongst the ecclesiastical articles which come most naturally within the scope of secular confirmation are the enforcement of Sunday and festival holidays, the payment of tithe, the establishment of the sanctity of oaths, of marriage and of holy orders, all of them frequent matters of early legislation." Id., 130. "The highest subject on which their general powers of deliberation could be exercised, is exemplified in the acceptance of christianity by the Northumbrian witan, as related by Bede." Id., 133; citing Hist. Eccl., ii, 13.

<sup>83</sup> Turner's Hist. of Anglo-Saxons, book 9, ch. 5, of vol. 3, p. 191, *et seq.*, edi. 1852.

<sup>84</sup> "The criminal jurisdiction was much the same under Edward the confessor as

ruled in the northern part of Gaul, since called France—ruled from 496 till 752, when they were supplanted by the Karolingians (Carolingians).<sup>85</sup>

“The chancellor of the Karolingian sovereigns succeeding to the place of the more ancient *referendarius* is simply the royal notary: the archi-cancellarius is the chief of a large body of such officers associated under the name of the chancery, and is the official keeper of the royal seal. It is from this minister that the English chancellor derives his name and function.”<sup>86</sup>

As to whether the *British* kings had their chancellors and court of chancery, it may be difficult to add to the information given in the following passage:

“Certain it is that both the British and Saxon kings had their chancellors and court of chancery, the only court out of which original writs do issue.”<sup>87</sup>

Lord Coke gives some few examples before the conquest. None of them are of *British* as distinguished from Saxon kings; and the examples of Saxon kings do not extend beyond what appears in ch. 3, § 7, pp. 63, 64, and in ch. 4, §§ 2, 3, 4, 5, and 8, pp. 73, 75, 77, 83, 96. In conflict therewith is the view of Mr. Stubbs, that it was in “the age of Edward the confessor” that “the title of chancellor was *introduced* into England”—that of the English sovereigns he is “*the first* who had a chancellor.”<sup>88</sup> “In this view Mr. Stubbs has the support of a tract written between May 1596, and July 1603,<sup>89</sup> the author whereof considers “that the name and office of chancery was first brought into England out of France.” Though he may be right in thinking

it had been in the days of Tacitus. The king and witenagemot may be said to have possessed a superior jurisdiction ‘over all persons and over all causes,’ although from the nature of the case it may not have been frequently exercised.” *Id.*, 132.

<sup>85</sup> *Encycl. Am.*

<sup>86</sup> *I* Stubbs’s *Const. Hist.*, ch. 11, p. 352. Mr. Stubbs mentions that “Waitz, D. V. G., ii, 409, traces the history of the Merovingian *referendarius* as a lay of-

ficer; the *scriptores*, *notarii* and *cancellarii* seem to have been part of his staff.” “In the Karolingian period the archi-cancellarius, or cancellarius, who keeps the seal, becomes an important officer. *Ibid.*, iii, 426.”

<sup>87</sup> *4 Inst.*, 78.

<sup>88</sup> *I* Stubbs’s *Const. Hist.*, ch. 11, p. 352, and note.

<sup>89</sup> Hargrave’s *Law Tracts*, p. 229; mentioned *post* in ch. 34, § 5.

that Edward the confessor "being brought up in France, *or some other*, brought it first from thence hither," yet the beforementioned examples in chapters three and four may be consistent even with this position: between English on one, and Normans and French on the other, side of the channel, there was much intercourse before the times of men named as such examples. "The Normans had had mercantile establishments in London as early as the reign of Æthelred, if not of Eadger."<sup>90</sup>

Mr. Stubbs supposes Edward the confessor to be "the first of our sovereigns who had a seal."<sup>91</sup> Centuries ago Lord Coke said "the sealing of charters and deeds is much more ancient than some out of error have imagined."<sup>92</sup> Any who take an interest in the matter may read his observations, together with those of Mr. Thomas Duffas Hardy.<sup>93</sup>

*9. Of the king: not hereditary, but elected; by whom elected; how deposed; his dignity and power; the connection between the administration of the king's peace and his function as the fountain of justice.*

That the accession of the Anglo-Saxon sovereigns was not governed by the rules of hereditary succession is manifest from their history, as shewn in the preceding chapters.<sup>94</sup> The king was, in theory, always elected, and the fact of election was stated in the coronation service, throughout the middle ages, in accordance with

<sup>90</sup> Green's Hist. of Engl. Peop., book 3, ch. 1, p. 213, of vol. 1.

<sup>91</sup> 1 Const. Hist. of Engl., ch. 11, p. 352.

<sup>92</sup> Co. Lit., 7 a.

<sup>93</sup> Hardy's Close Rolls, pp. 64, 65, of edi. 1833.

<sup>94</sup> In Wessex, the son of its third king, Cealwin, did not succeed; the son of Ceolwulf was equally passed by. Ceadwalla left two sons, yet Ina acceded, to their prejudice; and he was elected king, though his father was alive. There were other proceedings of the same sort, both before and after Egbert. Ethelbert, the second son of Ethelwulph, left sons,

and yet Ethelred succeeded in their stead. They were still excluded when Alfred and his son received the crown. So Athelstan, though he may have been illegitimate, was chosen in preference to legitimate brothers. On Edgar's death, both his eldest and his youngest son were made candidates for the crown, though Edward was preferred; and although Edmund Ironside left a son, there was chosen, in preference to him, first Edward the confessor, and afterward's Harold the second. Turner's Hist. of Anglo-Saxons, book 8, ch. 1, pp. 131, 132, of vol. 3.

most ancient precedent.<sup>95</sup> The succession was, by constitutional practice, restricted to one family; and the rule of hereditary succession was only set aside in great emergencies, and in very trying times. According to Mr. *Stubbs*, "the principle may be generally stated thus—the choice was limited to the best qualified person standing in close relationship to the last sovereign."<sup>96</sup>

The election of the kings belonged, both in form and substance, to the witan, although exercised by them in general assemblies of the whole nation. Both the formal election, preparatory to the act of coronation, and the actual selection when the necessity for a free choice occurred, belonged to the witan.<sup>97</sup> The right of deposing a worthless king has been thought to be a corollary from the right of election.<sup>98</sup>

Although sometimes the election is mentioned as if other persons besides the witan were concerned in it, yet from a comparison of passages on the subject, the result seems to Mr. Turner to be, that the king was elected at the witenagemot held on the demise of the preceding sovereign; and citizens or lathsmen present at the election were probably the more popular part of the national council, the representatives of the cities and burghs.<sup>99</sup>

As the personal dignity of the king increased, and the character

<sup>95</sup> *Id.*, p. 133 to 137, and ch. 3, p. 141; *Stubbs's Const. Hist.*, ch. 6, p. 135.

<sup>96</sup> Mr. Turner remarks that "their choice of the cyning in Wessex, even when the heir was disregarded, was always made from the family of its first founder, Cerdic, and usually from the kinsmen of the preceding sovereign. *Hist. of Anglo-Saxons*, book 8, ch. 1, p. 132, of vol. 3. Mr. *Stubbs* observes that "it is seldom, except in case of revolution or conspiracy, that any one but a son or brother is chosen; and in the case of a king dying in mature years, his eldest son would be, and was, in practice, held to be, in every respect, the safest successor." *1 Const. Hist.*, ch. 6, pp. 135, 136. "The election of kings" is treated of in *1 Freem. Norm. Con-*

*quest*, p. 72, and appendix S, pp. 403, 404.

<sup>97</sup> *Turner's Hist. of Anglo-Saxons*, book 8, ch. 1, p. 130, of vol. 2; *Stubbs's Const. Hist.*, ch. 6, pp. 135, 136.

<sup>98</sup> *Id.*, p. 136. But it is not, in reality, so simple a matter, either in history or in theory. *Id.*, 136. The actual exercise by the witenagemot of their allowed and recognized right, must have depended very much on the circumstances of the case, and on the character of the sovereign with whom they had to deal." *Id.*, 139. "The right of the witan to depose the king" is treated of in *1 Freem. Norm. Conquest*, p. 71, and appendix R, p. 401 to 403.

<sup>99</sup> *Turner's Hist. of Anglo-Saxons*, book 8, ch. 1, p. 131, of vol. 3.

of his relation to his people was modified, his official powers were developed; and his function as fountain of justice became more distinctly recognized.<sup>100</sup> The process by which the national peace became the king's peace is almost imperceptible.<sup>101</sup> The administration of the peace is inseparable from the exercise of jurisdiction; those who are in the national peace are subject only to the national courts; those who are amenable to any jurisdiction, owe suit and service to the courts of the jurisdiction.<sup>102</sup>

10. *The fine arts among the Anglo-Saxons.*

"There is an Anglo-Saxon collection of drawings in existence, undoubtedly produced in the tenth century, whose excellence is such that the artist might have pretended 'to lord it over painting's field,'

<sup>100</sup> The peace, as it was called, the primitive alliance for mutual good behaviour, for the performance and enforcement of rights and duties, the voluntary restraint of free society in its earliest form, was from the beginning of monarchy under the protection of the king. 1 Stubbs's Const. Hist., pp. 179, 180.

<sup>101</sup> In Anglo-Saxon times the transition is mainly important as touching the organization of jurisdiction. The national officers now execute their functions as the king's officers, and executors of his peace; the shire and hundred courts, although they still call the peace their own, act in his name; the idea gains ground and becomes a form of law. Offences against the law become offences against the king, and the crime of disobedience, a crime of contempt, to be expiated by a special sort of fine." Id., pp. 182, 183.

<sup>102</sup> After speaking of immunities which, tying the judicature to the land, and forming one of the most potent causes of the territorial tendency, so far ousted the jurisdiction of the national courts, whether held in the name of the king or of the people, Mr. *Stubbs* says: "In the later laws, the king specifies the pleas of

criminal justice which he retains for his own administration and profit; such a list is given in the laws of Canute; breach of the king's protection, house-breaking, assault, neglect of the fyrd and outlawry. These were the original pleas of the crown and were determined by the king's officers in the local courts. By a converse process, such small parts of criminal process as still belonged to these courts, arising from the offences of smaller freemen, together with the voluntary and contentious jurisdiction for which the courts of the land owners were not competent, came to be exercised in the king's name. He interfered in suits which had not passed through the earlier stage of the hundred and the shire; and asserted himself as supreme judge in all causes, not in appeals only. All jurisdiction was thus exercised, either by the king through his officers, or by land owners who had their title from him. The royal officers acted in the hundred courts with freemen of all classes that still owed suit to them; and the shire courts were composed of all lords of land, *scir-thegns*, and others, including a representation of the humblest land owners." Id., pp. 186, 187.

even amongst the Cimabues and the Giotto's. His name is supposed to have been Godemann."—"The Benedictional of St. Ethelwold, an illuminated manuscript of the tenth century, in the library of the Duke of Devonshire, is the work" alluded to.—"This manuscript was the ancient Benedictional of the See of Winchester; and it is stated at the commencement of the work, that 'A prelate whom the Lord had caused to be head of the church of Winchester, the great Æthelwold, commanded a certain monk subject to him to write the present book; he ordered also to be made in it many arches elegantly decorated and filled up with various ornamental pictures, expressed in divers beautiful colours and gold.' At the end of this introduction, or dedication, the writer subscribes his name Godemann. This monk of St. Swithin's subsequently became Abbot of Thorney. Mr. Gage says, 'Although it is likely that this superb volume, filled with beautiful miniatures and ornaments of the richest design, was finished before Godemann had the government of the Abbey of Thorney, we are sure of one thing, that it was executed in this country, between the years 963, when Ethelwold received the episcopal mitre, and 984, when he died.'"<sup>108</sup>

<sup>108</sup> Penny Magazine for 1844, Jan., pp. 25, 26. The manuscript "is fully described by Mr. Gage in the 24th volume of the 'Archæologia;' the Antiquarian

Society caused to be beautifully engraved in their 'Transactions' thirty plates of the miniatures with which this remarkable work is adorned." Id., p. 26.

## TITLE II.

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### INSTITUTIONS OF ENGLAND DURING THE NORMAN PERIOD.

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CHAP. VI.—Institutions in the reign of William I —1066 to 1087.

VII.—Institutions in the reign of William II—1087 to 1100.

VIII.—Institutions in the reign of Henry I .—1100 to 1135.

IX.—Institutions in the reign of Stephen —1135 to 1154.

X.—Despotic power in the reigns of the Norman Conqueror and his sons.  
Rules of law, and modes of proceeding, before the Norman Conquest  
compared with what existed during the Norman period.

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## CHAPTER VI.

### INSTITUTIONS IN THE REIGN OF WILLIAM I—1066 TO 1087.

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*1. William crowned on Christmas day 1066. How his successive conquests of English territory should be regarded.*

After Harold was slain, if Edgar Atheling (grandson of Edmund Ironside) was by the *witena-gemot* chosen king,<sup>1</sup> such choice was soon abandoned; on William's approach to London, many of the nobility, and Edgar himself, came into his camp and declared their intention of yielding to him. At Westminster abbey, upon Christmas day (1066), William was crowned king by Aldred, archbishop of York.<sup>2</sup>

<sup>1</sup> 2 Lingard's Engl., ch. 1, p. 5.

<sup>2</sup> Henry of Huntingdon, book 6, p. 212; Hayward's Life of Will. I, Harl. Miscel., vol. III., p. 133 and p. 146; 1

Hume's Engl., ch. 4, p. 180; 1 Turner's Engl., ch. 4, p. 80 to 86; 2 Lingard's Engl., ch. 1, pp. 6, 7; 1 Mackintosh's Engl., ch. 3, p. 92 of edi. 1830. Con-

In relating the subjugation of England, Sir James Mackintosh observes that "it was a slow, not a sudden conquest. The territory won at the battle of Hastings was not a fourth part of the kingdom."<sup>8</sup>

"The successive conquests in which the Conqueror was engaged ought not to be regarded as, on his part, measures to quell rebellion. They were a series of wars, levied by a foreign prince against unconquered and unbending portions of the Saxon people. Their resistance was not a flame casually lighted up by the oppression of rulers: it was *the defensive warfare of a nation who took up arms to preserve, not to recover, their independence. There are few examples of a people who have suffered more for national dignity, and legitimate freedom.*"—"Let us not distort history by throwing the unmerited reproach of want of national spirit on the Anglo-Saxons, and thus placing an impassable barrier between our sympathy and the founders of our laws and liberties, whose language we speak, in whose homes we dwell, and in whose establishments and institutions we justly glory."

"The wars of William for the conquest of the West, the North and the East, were protracted for seven years after the battle of Hastings."—"In spite of all their misfortunes, the Saxons gave full time for other states to interpose, if any of them had taken alarm at the battle of Hastings. But *the people of Europe were then incapable of conceiving and feeling their common interest in preventing unjust aggrandizement.*"<sup>4</sup>

## 2. Of feudalism in William's time.

In the form which feudalism "has reached at the Norman Conquest, it may be described as a complete organization of society through the medium of land tenure, in which, from the king down to the lowest landowner, all were bound together by obligation of service and defence: the lord to protect his vassal, the vassal to do service to his lord; the defence and service being based on and regulated by the nature and extent of the land held by the one of the other. In those states which have reached the territorial stage of development, the rights of defence and service are supplemented by the right of jurisdiction. The lord judges as well as defends his vassal; the vassal does suit as well as service to his lord. In states in which

cerning "the marriage of William and Matilda," there may be reference to 3 Freem. Norm. Conq., p. 80, and appendix N, p. 433 to 442. In 1068 she was sent for to England and crowned at Whitsuntide. 2 Lingard's Engl., p. 18; 1 Stubb's Const. Hist., ch. 11, p. 342, note 3. William chose to be recrowned at the same time. Miss Strickland's Queens

of England, vol. I, ch. 2, p. 44 of Phila. edi. 1857.

<sup>8</sup>"It was bounded on the north and west by a line which we cannot confidently fill up, but which extended from Dorset to the bay which enters between Norfolk and Lincoln." 1 Mackintosh's Engl., ch. 3, p. 98 of Phila. edi. 1830.

<sup>4</sup>Id. pp. 98, 99.



feudal government has reached its utmost growth, the political, financial, judicial, every branch of public administration, is regulated by the same condition.”<sup>6</sup>

“This was the social system which William the conqueror and his barons had been accustomed to see at work in France. One part of it, the feudal tenure of land, was perhaps the only description of tenure which they could understand; the king was the original lord, and every title issued mediately or immediately from him.”<sup>6</sup>

As his persecutions and their own resentments drove almost all the Anglo-Saxon nobility into revolt or exile, the largest part of the landed property of England fell gradually into his hands. He was obliged to grant what he seized or confiscated, to his clamorous followers; but he made military service the indefeasible condition of the donation. This had been customary in England before, to a modified extent; but many lands had become exempt from it and feeble governments had lost much of the power of enforcing it. It was now imposed as an universal obligation, and its performance was rigidly exacted. This condition of his bounty was made one of the fundamental laws of the kingdom in parliament, where it was ordered that ‘all earls, bishops, knights, esquires and freemen, should hold themselves ready in horses and arms to do the king full service, and to go as they ought, and as he by the common counsel of all the kingdom should provide, and as he had granted in hereditary fee.’<sup>7</sup>

All freemen were to take the oath of fealty to the king, and to preserve faithfully his lands and honors, and to defend him against all enemies and strangers.<sup>8</sup>

The Norman king is still the king of the nation. He has become the supreme landlord; all estates are held of him, mediately or immediately; but he still demands the allegiance of all his subjects.<sup>9</sup>

<sup>6</sup> Stubbs's Const. Hist., ch. ix, pp. 251, 252. <sup>6</sup> Id., p. 256.

<sup>7</sup> Turner's Engl., ch. 4, pp. 132, 133, citing *Leges Will. Conq.*, ap. Wilkins' *Leges Saxon.*, p. 228. His military grants made 60,000 knights fees on the island. *Ord. Vit.* 523. This was the number of knights which he called out on the threat of a Danish invasion. *Id.*, p. 649.

<sup>8</sup> Turner's Engl., ch. 4, p. 137, Hayward says: “In all those lands which he gave to any man, he reserved ‘dominion in chief’ to himself; for acknowledgment whereof a yearly rent was paid unto him, and likewise a fine when-

soever the tenant did alien or die.”—“If any died, his heir being in minority, the king received the profits of the land and had the custody and disposing of the heir's body until his age of 21 years.” *Life of Will. I.*, in 3 *Harl. Miscel.*, p. 153.

<sup>9</sup> Stubbs's Const. Hist., ch. 9, p. 274. The oath which he exacted at Salisbury in A. D. 1086 was a modification of that taken to Edmund (*Id.*, ch. 6, pp. 148, 149), and was intended to set the general obligation of obedience to the king in its proper relation to the new tie of homage and fealty by which the tenant was bound to his lord. *Id.* pp. 274, 275.

All men continued to be primarily the king's men, and the public peace to be his peace.<sup>10</sup>

### 3. *Of Domesday book.*

Of the English chronicle (mentioned in ch. 3, § 8, p. 66,) it is said that it "stands alone among the sources of history, holding a place among the written remains of Teutonic prose, second only to the bible of Ulfilas." "If the English chronicle stands alone, Domesday-book stands alone also. No other land can show such a picture of a nation at one of the great turning points of its history."<sup>11</sup>

The Conqueror had an official survey of the royal rights taken in every part of the kingdom; and we find the hundred, or similar bodies, in every county, making the inquisition to the king's commissioners, who returned to the sovereign that minute record of his claims upon his subjects, which constitutes the Domesday-book.<sup>12</sup> Hayward says:

"He caused the whole realm to be described in a censual roll, so as there was not one hide of land but both the yearly rent and the owner thereof were therein set down; how many plough-lands, what pastures, fens or marshes; what woods, parks, farms and tenements were in every shire; and what every one was worth. Also how many villains every man had, what beasts or cattle, what fees; what other goods; what rent or commodity, his possessions did yield."—"According to this roll, taxations were imposed, sometimes two shillings, and sometimes six shillings, upon every hide of land (a hide containing twenty acres) besides ordinary provisions for his house."<sup>13</sup>

<sup>10</sup> Their lords might demand their service to fulfill their own obligations, but the king could call them to the fyrd, summon them to his courts and tax them without the intervention of their lords; and to the king they could look for protection against all foes. *Id.*, p. 275.

<sup>11</sup> 5 *Freem. Norm. Conquest*, p. 1 to 34, ed. 1873; and *Id.*, appendix A, p. 490 to 494, appendix B, p. 494 to 499, *et seq.* to 539.

<sup>12</sup> 3 *Turner's Hist. of Anglo-Saxons*, book 8, ch. 3, p. 153 of vol. 3. Hayward says: "This book was called the Roll of Winton, because it was kept in the city of Winchester. By the English it was

called Domesday book, either by reason of the generality thereof, or else corruptly instead of *Domus dei* book; for that it was laid in the church of Winchester in a place called *Domus Dei*." *Life of Will. I.* in 3 *Harl. Miscel.*, p. 153. The second volume, as printed, of the Domesday book, ends an account of Suffolk with this annotation: "In the year 1086 this description was made," &c. The same date is given by old chroniclers cited in 1 *Turner's Engl.*, ch. 4, p. 140; 2 *Lingard's Engl.*, ch. 1, pp. 56, 57.

<sup>13</sup> *Life of Will. I.* in 3 *Harl. Miscel.*, p. 153.

The revenues of the crown were the continuation of those which the Anglo-Saxon sovereigns had enjoyed.<sup>14</sup>

"That every freeman had his definite rights, and every land its definite burdens and services, known and established by law and custom," Mr. Turner considers, "is apparent from numerous Anglo-Saxon documents which have survived to us and is fully shown by Domesday book."<sup>15</sup>

4. *Measures to augment the free and benefit the servile portion of the population.*

William took measures to augment the free and benefit the servile portion of the population.<sup>16</sup>

"Almost all the rustic population of England was in the servile state, under the different names of Villani, Bordarii, Servi, Cotarii, Coscez; they were attached to the land, sold with it like the cattle, and were a part of its live feoh or living money. But the laws of William gave them legal rights, and rescued them from arbitrary bondage."<sup>17</sup>

<sup>14</sup> And the commissioners were ordered to enquire, all over the kingdom, what payments had been made to Edward the Confessor. We see these carefully recorded in Domesday book. I Turner's Engl., ch. 4, p. 136 and note 126; citing Ordericus who (p. 523) says: "That the king received from his just revenue at the rate of sixteen hundred pounds thirty shillings and three half pence a day, *exceptis muneribus regis et reatum redemptionibus aliis que multiplicibus negotiis*, which daily increased the king's treasury."

<sup>15</sup> "In which the commissioners appointed by the Conqueror made a specific return of the gelding lands and burghs of the country, and stated the individual payments and share of military burdens to which each was subject, and which only could be claimed from him according to law and ancient custom. The act of the national legislature, to which, by his representatives, he assented, could alone subject him to further burdens." Turner's Hist. of Anglo Saxons, book 8, ch.

4, p. 182 of vol. III.

<sup>16</sup> By enacting that the residence of any of the servile portion of the population, for a year and a day, without being claimed in any city, burgh, walled town or castle, should entitle them to their perpetual liberty. Turner's Engl., ch. 4, p. 135; citing Leg. W. Conq., p. 229.

<sup>17</sup> Id. p. 135. It was enacted that lords should not deprive their husbandmen of their land, so long as they did the proper service for it; that these cultivators should not be called upon to do any other work than their due service, Ingulf, p. 90; Leg. W. Conq., 225; and that no man should be sold out of the country. Id. 229. In William's Domesday inquisitions, one of the legal enquiries was, whether any of the peasantry had a right of leaving the lands they occupied, and of going where they pleased; this important privilege was carefully recorded, that they might not be defrauded of it. I Turner's Engl., p. 134.

"An easy mode of emancipation was established, which, from its publicity, tended not only to secure the freedom of the liberated, but to give the generous master the satisfaction of knowing that his bounty was witnessed by the first men of his district. In the full county court he was to take his slave by the right hand; to deliver him to the sheriff; to declare his manumission; to shew him the open door; and to put into his hands the arms of the free, a lance and a sword."<sup>18</sup>

It was enacted "that all freemen of the whole kingdom should have and hold their lands and their possessions well and in peace, free from all unjust exaction and contribution, so that nothing be exacted or taken from them but the free service which they owe by law and by the tenure of their lands, and as is appointed and granted to them in hereditary right forever by the common council of all our kingdom."<sup>19</sup>

5. *How far previous laws and courts were preserved.*

On the authority of Ranulf Glanvill<sup>20</sup> it is stated that William "issued in his fourth year, a commission of enquiry into the national customs, and obtained from sworn representatives of each county a declaration of the laws under which they wished to live;" and that "the compilation which bears his name is very little more than a reissue of the code" of Edgar or of Canute. And it is said "this proceeding helped greatly to reconcile the English people to his rule."<sup>21</sup>

Hayward says, "In the beginning of his reign, he ordained that the laws of Edward should be observed, together with those laws which he did prescribe; but afterwards he commanded that nine men should be chosen out of every shire, to make a true report what were the laws and customs of the realm. *Of these he changed the greatest part and brought in the customs of Normandy in their stead*; commanding also that causes should be pleaded, and all matters of form dispatched, in French. Only he permitted certain Danish laws which before were chiefly used in Norfolk, Suffolk and Cambridgeshire, to be generally observed, as having great affinity with his Norman customs; both being derived from one common head."<sup>22</sup>

As to the words in italics, the annotator has subjoined the following:

"This I apprehend is a misinterpretation of Ingulphus, who does

<sup>18</sup> Id., citing Leg. W. Conq., 229.

<sup>19</sup> 1 Turner's Engl., ch. 4, p. 137.

<sup>20</sup> Hoveden ii. pref. p. xlvii; cited in

1 Stubbs's Const. Hist., ch. 9, p. 268.

<sup>21</sup> 1 Stubbs's Const. Hist., ch. 9, p.

268, and ch. 11, p. 385; citing Hoveden ii., 218, 235; Select Charters, 78.

<sup>22</sup> Printed in 1613; reprinted in 1810 in Harl. Miscel., vol. III., p. 152.

not say that the conqueror changed the laws or brought in the Norman customs in their stead: but, '*Ipsum etiam idioma tantum abhorrebant* (Normanni) *quod leges terræ, statuta que Anglicorum regum lingua Gallica tractarentur*,' p. 71, which affirms only that the emperor had the ancient English laws translated into French, but still they remained the laws of the land and the statutes of the English kings. And whoever will consult Madox's History of the Exchequer, p. 123, will find good authority for what is here advanced, and that the change mentioned by our author was not completely brought about till the reign of Henry II."<sup>23</sup>

In a publication in 1649, it is said:

"As the Danish law was altered by King Edward, so were King Edward's laws disused by the Conqueror, and some of the Danish customs again revived. And to clear this, we must consider that the Danes and Normans were both of a stock, and situated in Denmark, but called Normans from their northern situation, from whence they sailed into France, and settled their customs in that part of it which they called Normandy by their own name, and from thence into Britain. And here comes the great alteration of our English laws by William the Conqueror, who, selecting some passages out of the Saxon, and some out of the Danish law, and in both having greatest respect to his own interest *made by*<sup>24</sup> the rule of his government; but his own will was an exception to this rule, as often as he pleased."<sup>25</sup>

Exactly what was done by William may not clearly appear in every respect.<sup>26</sup>

It is said, "he ordained" "his council of state, his *chancery*, his exchequer, his *courts of justice*, which always removed with his court. These places he furnished with officers, and assigned four terms in the year for determining controversies among the people; whereas before, all suits were summarily heard and determined in the Gemote, or monthly convention, in every hundred, without either formalities or delay."<sup>27</sup>

One writer (in 1649) speaks of the alterations by the Conqueror as very great:<sup>28</sup> another (in 1689), while admitting that some Norman customs were brought in, says, "the trial by twelve men, and other fundamentals of government, wherein the English freedom consists,

<sup>23</sup> 3 Harl. Miscel., p. 152, *note*.

<sup>24</sup> So in 6 Harl. Miscel., pp. 218, 219.

<sup>25</sup> *Id.*

<sup>26</sup> Preface to 3 Rep., xxi; Francklin's Annals, p. 259; Freeman's Norman Con-

quest, vol. 4, ch. 19, pp. 216, 217.

<sup>27</sup> Hayward's Life of William I, Harl. Miscel., p. 153, of vol. 3, ed. 1810.

<sup>28</sup> Reprinted in 1810, in 6 Harl. Miscel., p. 219.

he left untouched, which have remained till this day.<sup>29</sup> So it seems to be considered by Mr. Hume,<sup>30</sup> Mr. Turner and Dr. Lingard.<sup>31</sup>

This last says, "The national council, though it hardly contained a single native, continued to be constituted, as it had been formerly, of the principal landed proprietors, the immediate vassals of the crown; it assembled at the same stated periods; it exercised the same judicial and legislative powers. The administration of justice was vested in the ancient tribunals, the king's court, the shire-motes, hundred-motes and hall-motes: the statutes of the Anglo-Saxon kings, with the provincial customs known by the names of West-Saxon law, Mercian law and Northumbrian law, were repeatedly confirmed; and even the rights and privileges of every smaller district and petty lordship were carefully ascertained, and ordered to be observed."<sup>32</sup>

Mr. Stubbs considers that "in the department of law the direct changes introduced by the Conquest were not great." He observes that "Much that is regarded as peculiarly Norman was developed upon English soil, and although originated and systematized by Norman lawyers, contained elements which would have worked in a very different way in Normandy."<sup>33</sup> Mr. Green says of William:

"If as Conqueror he covered the country with a new military organization, as the successor of Eadward he maintained the judicial and administrative organization of the old English rule."—"The shire became the largest unit of local government, and in each shire the

<sup>29</sup> Reprinted in 1810, in 9 *Id.*, p. 346.

<sup>30</sup> 1 Hume's *Engl.*, app., pp. 457, 458, of N. Y. ed., 1850.

<sup>31</sup> 1 Turner's *Engl.*, ch. 4, pp. 134, 135.

<sup>32</sup> 2 Lingard's *Engl.*, ch. 1, pp. 55, 56.

<sup>33</sup> "The Domesday survey may owe its principle to a foreign source; the oath of the reporters may be Norman, but the machinery that furnishes the jurors is native; 'the king's barons enquire by the oath of the sheriff of the shire, and of all the barons and their Frenchmen, and of the whole hundred, the priest, the reeve and six eorls of every township.'" If "the collective Frank pledge, which some writers incline to treat as a Norman innovation," "were indeed a precaution taken by the

new rulers against the avoidance of justice by the absconding or harbouring of criminals, it fell with ease into the usages, and even the legal terms which had been common for other similar purposes since the reign of Athelstan. The trial by battle," which "seems to have been brought in by the Normans" (2 Lingard's *Engl.*, ch. 1, p. 54), Mr. Stubbs observes, "is a rule of old Teutonic jurisprudence, the absence of which from the Anglo-Saxon courts is far more curious than its introduction from abroad." 1 Stubbs, pp. 275, 276. Yet he speaks of it as an innovation much disliked, and says, "exemption from it was one of the privileges conferred by charter on towns in the next century." *Id.*, 276, *note*.

royal nomination of sheriffs for its administration concentrated the whole executive power in the king's hands. The old legal constitution of the country gave him the whole judicial power, and William was jealous to retain and heighten this. While he preserved the local courts of the hundred and the shire, he strengthened the jurisdiction of the king's court, which seems even in the Confessor's day to have become more and more a court of highest appeal, with a right to call up all cases from any lower jurisdiction to its bar."<sup>34</sup>

6. *Of changes in officials and in their titles and functions; qualifications for and manner of appointment to office, and its tenure. The Norman language more used and studied.*

Dr. Lingard says, William "made it the principal object of his government to depress the natives, and to exalt the foreigners; and within a few years every dignity in the church, every place of emolument or authority in the state, and almost all the property in the land, had passed into the possession of Normans."<sup>35</sup>

"With the change of officials came a sort of amalgamation or duplication of titles; the ealdorman, or earl, became the comes, or count; the sheriff became the vice-comes; the office, in each case, receiving the name of that which corresponded most closely with it in Normandy itself. With the amalgamation of titles came an importation of new principles and possibly new functions; for the Norman count and viscount had not exactly the same customs as the earls and sheriffs. And this ran up into the highest grades of organization; the king's court of counsellors was composed of his feudal tenants; the ownership of land was now the qualification for the witena-gemot, instead of wisdom; the earldoms became fiefs, instead of magistracies, and even the bishops had to accept the status of barons."<sup>36</sup>

William's first earls were merely successors of the earls of Edward the Confessor.<sup>37</sup> But the need of greater watchfulness seems to have

<sup>34</sup> Green's Short Hist., ch. 2, § 5, pp. 113, 114; Green's Hist. Engl. Peop., book 2, ch. 1, p. 130, of vol. 1.

<sup>35</sup> 2 Lingard's Engl., ch. 1, p. 28. Dr. Lingard, citing Orderic., 264-270, states of the monk Guitmond, a celebrated disciple of Lanfranc, that "when he was solicited by William to accept an English bishopric, he boldly replied that after having spontaneously abandoned wealth and distinction, he would never receive them again from those who pretended to give what was not their own; and that if the chance of war had placed

the crown on the head of William to the prejudice of the legitimate heir, it still could not authorize him to impose on the English, ecclesiastical superiors, against their will." Id., p. 31.

<sup>36</sup> 1 Stubbs's Const. Hist., ch. 9, pp. 269, 270.

<sup>37</sup> "William Fitz-Osbern held Herefordshire as it had been held by Earl Ralph; Ralph Guader, Roger Montgomery and Hugh of Avranches filled the places of Edwin and Morcar and the brothers of Harold." 1 Stubbs's Const. Hist., ch. 9, p. 270.

been impressed on him in 1074. Thenceforward he governed the provinces through sheriffs immediately dependent on himself.<sup>38</sup> He may have failed to guard with sufficient care against some of the sheriffdoms becoming hereditary and continuing to be so.<sup>39</sup> Yet the Norman lord who undertook the office of sheriff, was the king's representative in all matters, judicial, military and financial in his shire. From him or from the courts of which he was the presiding officer, appeal lay to the king.<sup>40</sup>

"In the king's court all the members, in the inferior courts the president and principal assessors, were Normans, who, while they were bound to decide in most cases according to the laws, were unable to understand the language of the natives. For their instruction and guidance the statutes of the Anglo-Saxon kings were transplanted into Norman. But where the judges were unacquainted with more than one language it was necessary that the pleadings should be in that idiom. In inferior tribunals much business was of necessity transacted in the language of the people; but in the king's court, which, from its superior dignity and authority, gradually drew all actions of importance to itself, causes were pleaded and judgments given in the Norman tongue. This, added to the consideration that all persons enjoying influence and patronage were foreigners, made the study of that language a necessary branch of education; and those who hoped to advance their children either in the church or state, were careful that they should possess so useful an acquirement."<sup>41</sup>

<sup>38</sup> "Avoiding the foreign plan of appointing hereditary counts, as well as the English custom of ruling by vice-regal ealdormen. He was, however, very sparing in giving earldoms at all, and inclined to confine the title to those who were already counts in Normandy or in France. To this plan there were some marked exceptions." *Id.*, p. 270.

<sup>39</sup> *Id.*, p. 272.

<sup>40</sup> *Id.*, p. 276.

<sup>41</sup> *Lingard's Engl.*, ch. 1, p. 52. Probably a more correct idea may be had from this than from what is stated in 3 *Harl. Miscel.*, 152. Mr. Stubbs says: "The kings issued their charters in English as well as Latin. Richard I is the first king of whom no English document is preserved, and our first French record belongs to the reign of John. But by far the great majority of

the writs and other legal records must have been kept in Latin, as those of the exchequer certainly were."—"It will be found on careful examination that very many of the Norman Latin names are merely translations of the Anglo-Saxon, not into the corresponding dialectic forms, but into the forms which represented the ideas which to the Norman mind they most nearly resembled. The Norman translated the word shire, not by *sectio*, or even *provincia*, but by *comitatus*; the word scir-gerefa not by *præpositus provincie*, but by *vice-comes*; the gemot is far more frequently the *curia* than the *conventus*; the *misericordia* and amercement have their exact correlatives in the Anglo-Saxon laws." *1 Const. Hist.*, ch. 11, p. 443.



7. *When, where and how the king sat in the witena-gemot; retaining its ancient form.*

The witena-gemot retained the ancient form; the bishops and abbots forming a chief part of it.<sup>42</sup> The king endeavoured to learn the English language,<sup>43</sup> and he, if in England, "sat crowned three times in the year in the old royal towns of Westminster, Winchester and Gloucester,"<sup>44</sup> holding the royal court, "hearing the complaints of his people, and executing such justice as his" imperfect "knowledge of their law and language, and his own imperious will allowed." "The royal court, containing the tenants in chief of the crown, both lay and clerical, and entering into all the functions of the witena-gemot, was the supreme council of the nation, with the advice and consent of which, the king legislated, taxed and judged."<sup>45</sup>

In the one authentic monument of William's jurisprudence, the act which removed the bishops from the secular courts and recognized their spiritual jurisdiction, he tells us that he acts 'with the common council and counsel of the archbishops, bishops, abbots, and all the princes of the kingdom.' The ancient summary of his laws contained in the Textus Roffensis, is entitled 'What William, king of the English, with his princes, enacted after the conquest of England;' and the same form is preserved in the tradition of his confirming the ancient laws reported to him by the representatives of the shires. The Anglo-Saxon Chronicle enumerates the classes of men who attended his great courts: 'there were with him all the great men over all England, archbishops and bishops, abbots and earls, thegns and knights.'<sup>46</sup>

<sup>42</sup> "Instead of being, as in Normandy, so insignificant an element that their very participation in deliberation has been doubted." 1 Stubbs's Const. Hist., ch. 9, p. 268.

<sup>43</sup> "That he might understand their legal complaints himself, and redress them without delay. His advanced age, and multifarious occupations, however, precluded a successful progress." 1 Turner's Eng., ch. 4, p. 104; citing Ord.

Vit., 529.

<sup>44</sup> 1 Stubbs's Const. Hist., ch. 9, pp. 268, 269. Hayward says: "His Christmas he often kept at Gloucester, his Easter at Winchester, his Whitsontide at Westminster; and was crowned once in the year at one of these places as long as he continued in England." Life of Will. I, in 3 Harl. Miscel., p. 156.

<sup>45</sup> 1 Stubbs's Const. Hist., ch. 9, p. 276.

<sup>46</sup> Id., ch. 9, pp. 276, 277.

8. *Of the separation of church jurisdiction from secular business of courts of law. Precautions of great importance.*

The most important ecclesiastical measure of the reign was the separation of church jurisdiction from the secular business of the courts of law.<sup>47</sup> "Henceforth the bishops and arch-deacons are no longer to hold ecclesiastical pleas in the hundred court, but to have courts of their own; to try causes by canonical not by customary law, and allow no spiritual questions to come before laymen as judges. In case of contumacy the offender may be excommunicated, and the king and sheriff will enforce the punishment. In the same way laymen are forbidden to interfere in spiritual causes."<sup>48</sup> "The ordinance"<sup>49</sup> expressly directed that the new (spiritual) "courts should not be governed by the municipal law of England, but by the canon law (*canones et episcopales leges*); i. e., by the same law which governed all spiritual courts which recognized the authority of the pope."<sup>50</sup>

"The change involved far more than appeared at first. The growth of the canon law in the succeeding century, from a quantity of detached local or occasional rules, to a great body of universal, authoritative jurisprudence, arranged and digested by scholars who were beginning to reap the advantages of a revived study of the Roman civil law, gave to the clergy generally a far more distinctive and definite civil status than they had ever possessed before, and drew into church courts a mass of business with which the church had previously had only an indirect connexion."<sup>51</sup>

But William would not admit extreme claims on the part of the popes. "Not only did he distinctly refuse the demand of fealty made by the legate Hubert on behalf of Gregory VII,<sup>52</sup> but he

<sup>47</sup> 2 Lingard's Engl., ch. 1, pp. 54, 55; Freeman's Growth of Eng. Const., ch. 2, p. 279, of 2d edi., Lond., 1873; 1 Green's Hist. of Engl. Peop., book 2, ch. 1, p. 132, of vol. 1.

<sup>48</sup> 1 Stubbs's Const. Hist., ch. 9, p. 283.

<sup>49</sup> Ancient Laws and Institutes, p. 213; cited in Stubbs's Select Charters, pp. 81, 81; Freem. Norm. Conq., iv, 263, 264,

and notes.

<sup>50</sup> Langdell's Summary of Eq. Pl., p. xiii.

<sup>51</sup> 1 Stubbs's Const. Hist., ch. 9, pp. 283, 284.

<sup>52</sup> Freem. Norm. Conq., iv, 432-434; cited in 1 Stubbs's Const. Hist., ch. 9, p. 285 note; Green's Short Hist., ch. 5, § 2, p. 115.

seems to have established an understanding with the English church which had the force of a concordat for future times.”—“He would not suffer that any one in all his dominions should receive the pontiff of the city of Rome as apostolic pope, except at his command, or should on any condition receive his letters if they had not been first shewn to himself.”—“A second rule was this: ‘He did not suffer the primate of his kingdom, the Archbishop of Canterbury, if he had called together under his presidency an assembly of bishops, to enact or prohibit anything but what was agreeable to his will and had been first ordained by him.’”—“A third rule was this: ‘he did not allow any of his bishops publicly to implead, excommunicate, or constrain, by penalty of ecclesiastical rigour, any of his barons or servants who was informed against, either for adultery or for any capital crime, except by his own command.’”<sup>53</sup>

9. *What the king did to have places of archbishops and other ecclesiastics properly filled; bringing from Italy and elsewhere men famous for learning and integrity. Particularly of Lanfranc, the successor of Stigand, as Archbishop of Canterbury. Of Lanfranc's suit as archbishop, against the Earl of Kent.*

Hayward says of the Conqueror, that “he procured Stigand, archbishop of Canterbury, Angelwine, bishop of East Angles, and certain other bishops and abbots, to be deprived by authority from Rome,<sup>54</sup> and detained them in prison during their lives, that strangers might enjoy their places.”<sup>55</sup> But on another page is this passage:

“He furnished ecclesiastical dignities, with men of more sufficiency of worth than had been usual in former times. And because within his own dominions, studies did not flourish and thrive, by reason of the turbulent times,—by reason of the often invasions of barbarous people, whose knowledge lay chiefly in their fists,—he drew out of Italy and other places many famous men, both for learning and integrity of life, to-wit: Lanfranc, Anselm, Durand, Trahern and others. These he honoured, these he advanced; to these he expressed great testimonies, both of favour and regard.”<sup>56</sup>

<sup>53</sup> 1 Stubbs's Const. Hist., ch. 9, pp. 149, note.  
285, 286.

<sup>55</sup> Id., p. 149.

<sup>54</sup> In a provincial council held at Winchester, in the presence of two cardinals. Life of Will. I, in 3 Harl. Miscel., p.

<sup>56</sup> Life of Will. I, in 3 Harl. Miscel., p. 158.

Notwithstanding the language quoted in § 6, p. 131, from Dr. Lingard, he says, "to the praise of William, it should be observed, that, with one or two exceptions, he admitted none to the higher ecclesiastical dignities, who were not distinguished by their talents and virtues."<sup>57</sup> Lanfranc, the first named (of those just mentioned), is very highly commended by the best historians.<sup>58</sup>

"After acquiring some celebrity in" Pavia (where he was born about 1005), and "was for several years professor of laws, his anxiety to travel took him to Normandy, where he first opened a school at Avranches, and eventually, about 1042, retired to the poor and lowly abbey of Bec, then one of the most insignificant of the Norman monasteries. Herluin, the abbot, discovering his talents, induced him to resume his office of teacher; and the fame of his lectures became so widely extended that students flocked to them from all parts, Pope Alexander II, being one of his pupils. He thus diffused a taste for knowledge among the clergy, and to him, in a great degree, is to be attributed the revival of Latin literature and the liberal arts in France."—"Duke William, who highly appreciated his talents, took the advantage of his visit to Rome by employing him to obtain a repeal of the sentence of excommunication to which he had been subject by Mauger, archbishop of Rouen, on account of his marriage with Matilda, alleged to be related to him within the forbidden degrees of consanguinity. Lanfranc was successful in obtaining the papal dispensation, accompanied by a condition that William and his wife should each found an abbey at Caen. This injunction they immediately obeyed, dedicating one of them to St. Stephen, and the other to the Holy Trinity. Of the former Lanfranc was appointed the first abbot in 1063; and pursued his lectures there with increased celebrity. William entrusted to him the education of his children, and offered him the archbishopric of Rouen, which he was allowed to refuse; but after the Conquest, on the removal of Stigand from the archbishopric of Canterbury, the king, feeling the importance of supplying his place with a man of weight and prudence, faithful to his interests, and equal to the burden, selected Lanfranc as his successor, and overcame the scruples with which the modest abbot resisted his elevation."—"He was accordingly consecrated in August, 1070, and on visiting Rome in the following year to receive the pall, was welcomed with particular respect by his former pupil, Alexander II, who rose to give him audience, kissed him instead of presenting his slipper for that obeisance, and not

<sup>57</sup> 2 Lingard's Engl., ch. 1, pp. 29, 30.

<sup>58</sup> Turner's Engl., book 2 ch. 2, p. 211, of vol. 4, Lond. edi., 1825; Id., 215, notes 16, 17, and p. 217; 2 Lingard's Engl., ch. 1, pp. 30, 31; 2 Freem.

Norm. Conquest, p. 146, *et seq.*, edi. 1873; 3 Id., p. 68 *et seq.*; 1 Stubbs's Const. Hist., ch. 9, p. 281, ch. 11, p. 441; Green's Short. Hist., ch. 2, § 3, p. 102, and § 5, p. 114.

satisfied with giving him the usual pall, invested him with that which he had himself used in celebrating mass."<sup>59</sup>

Mr. Stubbs speaks of Lanfranc as William's 'great adviser' and 'a very able and conscientious helper': 'a statesman as well as a theologian, a lawyer as well as a scholar, and in feeling quite as much an Englishman as a Norman.'<sup>60</sup>

Lanfranc's influence with William was undoubted. Against the king's brother,<sup>61</sup> Odo, bishop of Bayeux, and earl of Kent, suit was instituted by Lanfranc for manors which, belonging to the archbishopric, had been taken possession of by Odo while Stigand was in disgrace.<sup>62</sup>

10. *Of the trial of the suit between Lanfranc, as archbishop of Canterbury, and Odo, as earl of Kent; and of the suit between Gundulf, bishop of Rochester, and Picot, sheriff of Cambridge-shire: in what court, in whose presence, and with what result.*

"The great suit" (mentioned in the last paragraph of the preceding section) "between Lanfranc, as archbishop of Canterbury, and Odo, as earl of Kent, which is perhaps the best reported trial of the reign, was tried in the county court of Kent, before the king's representative, Gosfrid, bishop of Coutances; whose presence, and that of most of the great men of the kingdom, seem to have made it a *witena-gemot*. The archbishop pleaded the cause of his church in a session of three days, on Pennenden Heath; the aged South-Saxon bishop, Ethelric, was brought by the king's command to declare the ancient customs of the laws, and with him several other Englishmen skilled in ancient laws and customs. All these good and wise men supported the archbishop's claim, and the decision was agreed on and determined by the whole county. The sentence was laid before the king and confirmed by him." Mr. Stubbs says: "Here we have probably a good instance of the principle universally adopted; all the lower machinery of the court was retained entire, but the presence of the Norman justiciar and barons gave it an additional authority, a more direct connection with the king, and the appearance at least of a joint tribunal."<sup>63</sup>

<sup>59</sup> Foss's Biogr. Jurid.

<sup>60</sup> 1 Stubbs's Const. Hist., ch. 9, p. 281.

<sup>61</sup> A younger son of Arlotta, the mother of William by Herluin de Conteville, whom she married after her connection with Robert, Duke of Normandy. *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> 1 Stubbs's Const. Hist., ch. 9, p.

277, and ch. 11, p. 349; citing what is "printed in *Anglia-Sacra*, i, 334-336, from the *Textus Roffensis*, Wilkins' *Concilia*, i, 323, 324;" and mentioning the litigation as "referred to in *Domesday* 1, fol. 5." Mr. Foss states that "the restoration of twenty-five manors was adjudged to" Lanfranc.

There is "an account of another trial of some interest between Gundulf, bishop of Rochester, and Picot, sheriff of Cambridgeshire. The suit was brought before the king; he called together the county court of Cambridgeshire and directed that the right to the disputed land should be decided by their judgment. Bishop Odo presided. The Cambridgeshire men, in fear of the sheriff, decided against Gundulf. Odo thereupon decided that they should choose twelve out of their number to swear to the truth of their report. The twelve swore falsely; and one of them having confessed his perjury to Odo, he ordered the sheriff to send the jurors up to London, and with them twelve of the best men of the county. He also summoned a body of barons. This court of appeal reversed the decision of the shire. The twelve best men tried to deny their complicity with the perjurers, and Odo offered them the ordeal of iron. They failed under the test, and were fined by the rest of the county three hundred pounds, to be paid to the king."<sup>64</sup>

*II. Of the court of chancery. Names of chancellors in William's reign.*

What Lord *Coke* says, 'touching the court of chancery before the Conquest,' is followed with the observation that "Polydor Virgill, who affirmeth this court to come in with the Conqueror, *perperam erravit*."<sup>65</sup>

Of the chancellors in the reign of William the Conqueror, some are mentioned in 4 Inst., 98. *Arfastus* (or *Herfastus*), by birth a Norman, who had been one of William's chaplains<sup>66</sup> before the Conquest, and continued after it in favour with him, became his chancellor—and (Mr. Foss thinks) was probably his first chancellor—in England.<sup>67</sup>

<sup>64</sup> 1 Stubbs's Const. Hist., ch. 9, p. 297, note. On page 347, in note 1, Mr. Stubbs refers to Ang. Sac. 1, 339; and to Liber Eliensis (ed. Stewart) i, 252.

<sup>65</sup> 4 Inst., 78.

<sup>66</sup> He had been a monk in the abbey of Bec, in Normandy, where his pretensions to learning, however slender, seem to have made some show, perhaps from the greater ignorance of others. As one of the duke's chaplains, he, in great pomp, visited the abbey after Lanfranc had raised its character. His deficiencies were then somewhat rudely ridiculed and exposed by Lanfranc. Arfastus, in revenge, procured Lanfranc's banishment.

But this was soon terminated by the duke; and Lanfranc became first a monk, and then prior, of the monastery. Foss's Biogr. Jurid.

<sup>67</sup> He held the office at Whitsuntide 1068, his name, with that addition being attached to a charter, which Mr. Foss states, on inspection, appears to be of that date. He was also chancellor in the following year, and probably retired about the middle of the year 1070, when he received the bishopric of Helmham in Norfolk—not Helmstadt, in Germany, as stated by Oldmixon and another. Arfastus died in 1084, and was buried in his cathedral. Biogr. Jurid.

Those who held the office during the remainder of this reign seemed to Mr. Foss to be as stated below.<sup>68</sup>

12. *To whom was, in the king's absence, entrusted the administration—the presiding over the Curia Regis and managing the revenue. How the justiciar became a permanent functionary.*

To William Fitz-Osborne (count of Bretteville in Normandy), and to the king's half-brother, Odo, the bishop of Bayeux, was, during the king's absence, in 1068, entrusted the administration<sup>69</sup>—the presiding over the Curia Regis, and managing the king's revenue. When the king went to Normandy in 1073, William de Warenne was left as joint chief justiciary of the kingdom, with Richard, called first de Fitz-Gilbert, from his father, and afterwards de Benefacta, from his estate of Benefield, in Northamptonshire.<sup>70</sup> During this absence of the king tidings reached him of the plot of Roger, earl of Hereford, mentioned in 2 Inst., 50. It was so early suppressed that Lanfranc, the archbishop of Canterbury, in a dispatch to the king, requests him not to trouble himself to cross the seas for such a cause.<sup>71</sup> Mr. Turner treats Lanfranc as "one of the regency" at this

<sup>68</sup> It was held between 1070 and 1074 by Osbert, perhaps the Osbert then made bishop of Exeter; between 1075 and 1078 by Osmund, who became bishop of Salisbury; between 1078 and 1083 by Maurice, then made bishop of London; after him, probably between 1083 and 1085 by *William Welson*, who, at Christmas, 1085, received the bishopric of Thetford, and was succeeded by *William Giffard*, the last chancellor of William I. The account in this section is taken from Biogr. Jurid., and varies from that in 1 Campbell's *Lives of the Chancellors*, ch. 2, p. 41 to 46.

<sup>69</sup> 1 Turner's Engl., ch. 4, p. 89. The southern division was appropriated to Odo, and the northern to Fitz-Osborne, on whom the earldom of Hereford and the office of constable or marshal (*magister militum*) were also conferred. Adeline, daughter of Roger de Toney, a great Norman baron, standard-bearer of King

William, was the first wife of Fitz Osborne. Foss's Biogr. Jurid. His son, Roger, is the earl of Hereford, mentioned by Lord Coke in 2 Inst., 50. In the auto-biography of Roger Brooke Taney, late chief justice of the supreme court of the United States, there is no suggestion of his being descended from Roger de Toney, but it is stated that his mother was the daughter of Roger Brooke, a descendant of Robert Brooke, who arrived out of England in Maryland the 29th of June, 1650, and was descended from Roger Brooke, born the 20th of September, 1637, at Bretnock College, whose mother was Mary, second daughter to Roger Mainwaring, doctor of divinity and dean of Worcester. Memoir of Taney, p. 20 to 27.

<sup>70</sup> Foss's Biogr. Jurid.

<sup>71</sup> 1 Turner's Engl., ch. 4, p. 114, citing Lanfranci Opera Omnia. Ep. 34, p. 318.

period.<sup>72</sup> Dugdale infers that Lanfranc, in conjunction with Geoffrey, bishop of Coutance, and Robert, earl of Moreton, held the office of chief justiciary during some part of the Conqueror's reign; and Mr. Foss thinks this inference correct.<sup>73</sup> Mr. Stubbs mentions that in the king's absence "the administration was entrusted to a justiciar, a regent or lieutenant of the kingdom." He observes that "the convenience being once ascertained of having a minister who could, in the whole kingdom, represent the king, as the sheriff did in the shire, the justiciar became a permanent functionary."<sup>74</sup>

13. *Under what circumstances the king, becoming his own officer arrested his half-brother, Odo, bishop of Bayeux and earl of Kent.*

The king's half-brother, Odo, not content with being bishop of Bayeux and earl of Kent, conceived the project of purchasing the papacy. Having bought a palace at Rome, and engaged English nobles in the enterprise, and obtained ships for the conveyance of them and his treasures to Rome to await the death of Pope Gregory VII, he had, during the king's absence in Normandy, in 1079, collected his friends, and was ready to sail from the Isle of Wight when the king hastened to the scene and ordered his arrest. The fear of incurring ecclesiastical censure restraining his officers, the king became his own officer, and made the arrest himself. Odo claiming the privilege of his order and appealing to the pope, William, on the suggestion of Lanfranc, answered, 'I do not arrest the clergyman, or the bishop, but my own earl, whom by my own will I made governor of my kingdom, and from whom I require an account of his stewardship.' Afterwards, Odo was committed to custody in the castle of Rouen, where he remained a prisoner till the end of William's reign.<sup>75</sup>

<sup>72</sup> Id., p. 114.

<sup>73</sup> Biogr. Jurid.

<sup>74</sup> 1 Stubbs's Const. Hist., ch. 9, p. 276.

<sup>75</sup> Foss's Biogr. Jurid.; 2 Lingard's

Engl., ch. 1, p. 62; Green's Short Hist., ch. 2, § 6, p. 116; Green's Hist. of Engl. Peop., book 2, ch. 1, pp. 132, 133, of vol. 1.



14. *Of William's character; his queen's death; his last illness, and his death (in 1087).*

"William surpassed all his contemporary rulers in a capacity for command—in war certainly, and probably also in peace. Sagacity, circumspection, foresight, courage, both in forming plans and facing dangers, insight into character, ascendant over men's minds; all these qualities, he doubtless possessed in a very high degree."—"In extenuation of his perfidy and cruelty," it is observed "that he did not so far exceed chiefs of that age in these detestable qualities as he unquestionably surpassed them in ability and vigour."<sup>76</sup>

His queen died about 1083; the king survived her about four years; and they were years of trouble.<sup>77</sup> Being on the continent when his last illness began, he was taken to Rouen, and by his own desire removed to a monastery without the walls.<sup>78</sup>

Mr. Stubbs regards "his confession on his death-bed, if actually made as related by Ordericus," as "one of the most singular monuments of history. He looked back for fifty-six years on Normandy, and recounted what he suffered at the hand of his enemies, and how he had repaid them. He looked forward also, and augured of the future; but he did not attempt to do violence to destiny. Robert must have Normandy; William he wished, but dared not command, should have England; Henry he was sure would have all in the end."<sup>79</sup>

To Lanfranc the king sent a letter recommending William's coronation.<sup>80</sup> Shortly before the king's death, he ordered the release from prison of all captives (on condition of their swearing to be peaceable) with but one exception, which was of his brother, Odo. He was surprised with intercessions for Odo; pressed with assertions of his reformation, he at last unwillingly consented to his brother's discharge. The king died the 9th of September, 1087.<sup>81</sup>

<sup>76</sup> 1 Mackintosh's Engl., ch. 3, p. 101, of Phila. edi., 1830.

<sup>77</sup> 1 Turner's Engl., ch. 4, p. 121, to 123.

<sup>78</sup> Id., pp. 124, 125.

<sup>79</sup> 1 Stubbs's Const. Hist., ch. 10, p. 294.

<sup>80</sup> 1 Turner's Engl., ch. 4, pp. 125, 126.

<sup>81</sup> Turner says "in his sixty-third year."

Turner's Engl., ch. 4, p. 126 to 128. Hayward says "when he had reigned twenty years, eight months and sixteen days, in the sixty-fourth year of his age." His body was carried to Caen, and there buried in the church of St. Stephen; and his son William had a monument built over him. 3 Harl. Miscel., p. 160 to 162.

## CHAPTER VII.

INSTITUTIONS IN THE REIGN OF WILLIAM II—1087  
TO 1100.1. *What William promised, and what oaths he took, to secure the crown.*

"The Conqueror's last wish for the disposal of England was confided to Lanfranc, as the head of the witenagemot of the kingdom; and Lanfranc proceeded to secure the fulfilment of it in such a constitutional way as lay open to him, when the majority of the baronage were inclining to Duke Robert. William was ready to make any promise to secure his crown. He swore to Lanfranc that if he were made king he would preserve justice and equity and mercy throughout the realm, would defend against all men the peace, liberty and security of the churches, and would, in all things, comply with his precept and counsel. On this understanding Lanfranc crowned him" (Sep. 26, 1087),<sup>1</sup> "and received the formal enunciation of the engagement in the coronation oaths. The outbreak of war immediately after, forced from him another acknowledgement of his duty. He found Lanfranc his ablest adviser, Wulfstan his most energetic supporter; he called the English together, declared to them the treason of the Normans, and begged their aid. If they would assist him and be faithful in this need, he would grant them a better law of their own choosing; he forbade on the instant all unjust taxation, and surrendered his hold on their forests. The English too willingly believed him, and throwing themselves with energy into the struggle, brought it to a successful issue."<sup>2</sup>

2. *Of the justiciars in 1087 and 1088.*

Mr. Foss mentions that "on the Conqueror's death, in Sept. 1087, Odo" (bishop of Bayeux), "returned to England, and was restored to his earldom of Kent and the vast possessions which he had forfeited;" that "he was present at the court which William Rufus held

<sup>1</sup> Lingard's Engl., ch. 2, p. 77.

ch. 5, p. 141 to 145. The text is from 1

<sup>2</sup> Id., p. 76 to 79; 1 Turner's Engl.,

Stubbs's Const. Hist., ch. 10, pp. 295, 296

at the following Christmas;" and that on this occasion "he is described as '*justiciarius et princeps totius Angliæ*.'" Mr. Foss also refers to William of Malmsbury (*Gesta Regum*, 486, &c.,) as saying that *William de Carilefo*,<sup>3</sup> bishop of Durham, was appointed by William Rufus to administer the public affairs in 1088; and to Roger de Wendover (ii, 32, 34,) as stating that he was made '*justiciarius*.' But the tenure of the office of *justiciarius* by either of these bishops must have been very short. For Carilefo, in the spring of 1088, had joined Odo in the confederacy to depose King William and raise his brother Robert to the throne; and both Odo and Carilefo were soon obliged to quit the kingdom.<sup>4</sup>

3. *Of the Archbishop of Canterbury as the constitutional adviser of the Crown. Lanfranc, the king's best counsellor, died in 1089. Of the chancellors before 1093.*

Speaking of the ecclesiastical members of the witenagemot of the kingdom, now subsisting under the title of the great court or council, Mr. Stubbs says, "the archbishop of Canterbury is still recognized as the first constitutional adviser of the crown. William Rufus acknowledged the right of Lanfranc as distinctly as Henry I does that of Anselm."<sup>5</sup>

When reminded by Lanfranc of the promises mentioned in § 1, the king is said to have answered in wrath, 'who is there who can fulfill all that he promised?' So far as Lanfranc had power, he continued to employ it in the advancement of justice and the protection of the

<sup>3</sup> A native of Bayeux, who became a monk of St. Carilefo, from which he was advanced to be abbot of St. Vincentius; both being monasteries in the province of Maine. He was elected bishop of Durham, November 10, 1080. Foss's Biogr. Jurid.

<sup>4</sup> Odo retired to Normandy, and assisted Robert in his dukedom. It is supposed by some that he died in 1096, and was buried at Palermo on his way to

Rome; and by others that he accompanied Robert on his expedition to Jerusalem, and was killed at the siege of Antioch. Carilefo, after a banishment of two or three years, was permitted to return to England. He died at Windsor, January 2, 1095, but his remains were removed to Durham, and deposited in his cathedral. Id.

<sup>5</sup> 1 Const. Hist., ch. 11, p. 359.

English; to a considerable extent his counsels prevailed until his death, May 24, 1089, at the age of eighty-four.<sup>6</sup>

*William Giffard*, who was the last chancellor to William I, is generally mentioned as the first chancellor under William II, and to have been succeeded in 1090 by Robert Bloet,<sup>7</sup> who resigned the Great Seal when he was consecrated bishop of Lincoln in 1093,<sup>8</sup> and was succeeded by Galdric.<sup>9</sup>

4. *In 1093 the king, being ill, made new promises, and chose Anselm archbishop of Canterbury; the king's conduct afterwards was worse than before.*

After Lanfranc's death, the king 'began to act with unrestrained and wanton tyranny.'

"In A. D. 1093, when" the king "either believed himself to be dying, or wished to purchase a reprieve by repentance, he made a formal declaration, pledging his faith and making the bishops the sureties between himself and his God, sending them to make the promises for him before the altar. A written proclamation was made and sealed, all prisoners were to be released, all debts pardoned and all offences forgiven and forgotten. To all the people, moreover, were promised good and holy laws, the inviolable observance of right and a severe examination into wrongs such as should frighten all men from evil doing. The king recovered, but behaved worse than ever."<sup>10</sup>

<sup>6</sup> 1 Stubbs's Const. Hist., ch. 10, p. 296, and ch. 11, p. 359. Foss's Biogr. Jurid. Mr. Foss says, "His private charities were widely diffused, and his munificence as a prelate is proved by his rebuilding the cathedral of Canterbury, recently destroyed by fire, together with all the buildings for the monks, whose numbers he increased from 20 to 140. He founded also the two hospitals of St. Nicholas at Harbledown, and of St. John at Canterbury, for lepers and the infirm; he repaired many churches and monasteries in his diocese which had suffered in the wars; and he contributed largely to the restoration of Rochester cathedral." He "was buried in his cathedral" at Canterbury. *Id.*

<sup>7</sup> Probably the Bloet mentioned (in 2

Lingard's Engl., 76) as accompanying William Rufus to England upon the Conqueror's death.

<sup>8</sup> Henry of Huntingdon, book 7, p. 224. Mr. Foss who in his account of Lanfranc, specifies May 24, 1089, as the day of his death, makes the mistake of saying as to Bloet that "he was consecrated by *Archbishop Lanfranc* in 1093."

<sup>9</sup> Mr. Foss says, "Dugdale erroneously calls this chancellor Baldricus, and places him in the reign of William the first." Dugdale seems to be followed by Lord Campbell; Baldric being mentioned by him as in the Conqueror's reign. *Lives of Chancellors*, ch. 2, p. 44 of 2d ed.

<sup>10</sup> 1 Stubbs's Const. Hist., ch. 10, pp. 296, 297.

Before his illness, when solicited to nominate a successor to Lanfranc, he had frequently replied that he would never part with the temporalities of Canterbury. Now (in 1093) when the bishops renewed their importunities he exclaimed that he gave the office to Anselm.<sup>11</sup> Anselm refused it for a considerable time; seven months elapsed before he could be induced to receive the archepiscopal consecration; afterwards, "on the very day on which he entered Canterbury, and as he was going in procession to his cathedral, Flambard" (the subject of the next section) "arrested him in the street, and summoned him to answer in the king's court for some imputed breach of the royal prerogative." After other vexations, Anselm left England, in 1095, and went to Rome; and the king persevered in his rapacious and voluptuous career.<sup>12</sup>

5. *Of the character and offices of Ralf (or Ranulph) the Flambard; called by Henry of Huntingdon "the king's pleader, or rather his perverter of justice, the instrument of his exactions." Whether he is entitled to be called the father of English lawyers, or law writers. The king's works of architecture and engineering; especially of Westminster Hall.*

"Ralf (afterwards surnamed the Flambard,<sup>13</sup> or devouring torch,) was a Norman clergyman, of obscure birth, of ready wit, dissolute morals and insatiable ambition. He had followed the court of the Conqueror and first attracted notice in the capacity of a public informer. From the service of Maurice, bishop of London, he passed to that of William."—"His ingenuity was successfully employed in devising new methods of raising money. The liberty of hunting was circumscribed by additional penalties; to multiply fines, new offences were created; capital punishments were commuted for pecuniary mulcts; and another survey of the kingdom was ordered, to raise the land tax of those estates which had been underrated in the record of Domesday. By these acts Flambard earned the eulogium which was pronounced on him by the king, that he was the

<sup>11</sup> "The celebrated Anselm, a native of Aoust, in Piedmont, and abbot of Bec, in Normandy, is mentioned in ch. 6, § 9. He had, at this period, accidentally arrived in England, where he had been invited by Hugh, earl of Chester." 2 Lingard's Engl., ch. 2, p. 95.

<sup>12</sup> Id., p. 95 to 101; Green's Short Hist., ch. 2, § 6, p. 118; 1 Green's History of Engl. Peop., ch. 2, p. 139.

<sup>13</sup> Mentioned in 1 Campbell's Lives of the Chancellors, ch. 2, p. 48 to 50 of 2d edi. (1846.)

only man who, to please a master, was willing to brave the vengeance of the rest of mankind.”<sup>14</sup>

It is not easy to determine the precise nature or title of his office.

Lord Coke says, “As, *in omni re nascitur res quæ ipsam rem exterminat*, unless it be timely prevented (as the worm in the wood, or the moth in the cloth, and the like), so oftentimes no profession receives a greater blow than by one of their own coat. For Ranulph, an ecclesiastical person, and King William Rufus, his chaplain, a man *subacto ingenio* and *profunda nequitia*, was a factor for the king in making merchandize of church livings, inasmuch as when any archbishopric, bishopric or monastery became void, first he persuaded the king to keep them void a long time and converted the profits thereof sometime by letting and sometime by sale of the same, whereby the temporalities were exceedingly wasted and destroyed. Secondly, after a long time no man was preferred to them, *per traditionem annuli et baculi*, by livery of seisin, freely, as the old fashion was, but by bargain and sale, from the king to him that would give most, by means whereof the church was stuffed with unworthy and insufficient men, and many men of lively wits and towardliness in learning, despairing of preferment, turned their studies to other professions. This Ranulf, for serving the king’s turns, was advanced first to be the king’s chancellor, and after to be bishop of Duresme” (Durham), “who, after his advancement to so high dignities, made them servants to his sacreligious and simoniacal designs.”

This passage, in 2 Inst., 15, is not referred to by Mr. Foss. He mentions that William Giffard, in the character of chancellor, witnessed a charter witnessed by Robert Bloet, bishop of Lincoln, who was raised to that see in 1093, and by Walkeline, bishop of Winchester, who died in January, 1098; and therefore infers that Giffard must have been made chancellor after 1093, and before January, 1098. This inference seems reasonable. Yet, consistently therewith, Ranulf may have been the king’s chancellor some part of the interval between 1093 and January 1098. Not only is this in accordance with Lord Coke’s statement, but it is supported by what Mr. Foss cites from Godwin and from Spelman.

By whatever title Ranulph was distinguished, he was, as Mr. Foss states, “clearly the king’s chief minister.” Henry of Huntingdon, in his account of 1099, says: “That year the king gave the bishopric of

<sup>14</sup> 2 Lingard’s Engl., ch. 2, pp. 92, 93.

Durham to Ranulf, his pleader, or rather, his perverter of justice, the instrument of his exactions, which exhausted all England."<sup>15</sup>

"Ranulf was not only the 'exactor' of all the business of the kingdom, but the 'placitator' also. 'He drove and commanded all his gemots over all England.' His management broke up for a time the old arrangements of the hundred and shire-moots, making them mere engines of extortion, so that men rather acquiesced in wrong than sought redress at such a price."—"The subordinates of the court followed the example of their chief; no man was safe against them; the poor man was not protected by his poverty, nor the rich by his abundance."<sup>16</sup>

"Ingram quotes a curious notice of him" (Ranulf) from the chronicle of Peterborough,<sup>17</sup> which informs us that he wrote a book (now lost) '*on the laws of England*.' Ingram says, "he may therefore be safely called the father of English lawyers, or at least law writers. It was probably the foundation of the later works of Bracton, Fleta, Fortescue and others."<sup>18</sup>

The native chronicler tells us, "how great was the burthen of the king's great works of architecture and engineering; the wall with which he encompassed his father's Tower of London, the bridge which spanned the Thames, the new Hall of Westminster, in which he lived to keep the last two Whitsun festivals of his reign."<sup>19</sup> It is said that "these works were built at the expense of the *neighbouring* counties."<sup>20</sup>

According to Stowe, the original length of Westminster Hall was "270 feet, and its breadth 74. When the king heard men say that this hall was too great, he answered and said: 'This hall is not big enough by the one-half, and is but a bed-chamber in comparison of that I mean to make.'<sup>21</sup>

<sup>15</sup> Book 7, pp. 238, 239. Mr. Forester, in his edition of 1853, says in a note, "The Saxon chronicle calls him the king's chaplain, who held his courts (gemot) over all England."—"This Ranulf appears to have been a sort of judge in eyre or of circuit, and a very corrupt one."

<sup>16</sup> I Stubbs's Const. Hist., pp. 298, 301, 302.

<sup>17</sup> Published by Spacke *typis* Bowyer, 1723.

<sup>18</sup> So stated in note of Thomas Forester to p. 238 of Henry of Huntingdon, edi. 1853.

<sup>19</sup> "The wall of the chronicler goes up under the year 1097. Under 1099 he records the keeping of the feast of Pentecost for the first time in the new hall." Will. Malms. iv, 321; cited in 5 Freeman. Norm. Conquest, p. 82, edi. 1873.

<sup>20</sup> 2 Lingard's Engl., ch. 2, p. 103.

<sup>21</sup> Ireland's Inns of Court, pp. 244, 245 of edi. 1804.

6. *In 1099 William kept court in the new palace at Westminster. In August 1100, by the shot of an arrow, he was killed. His character.*

William "kept court for the first time in the new palace at Westminster," in 1099. In 1100, "after holding his court in great splendour, according to the custom of his predecessors, at Gloucester during Christmas, at Winchester during Easter, and during Whitsuntide at London, he went to hunt in the New Forest on the morning of the kalends (the 2d) of August." While hunting, he was—with an arrow, which seemed to be aimed at a stag—shot, it is said, unintentionally.<sup>22</sup> Mr. Turner may be right in saying of this king that his mind "was cast in no common mould."

"It had all the greatness and the defects of the chivalric character in its strong but rudest state. Impetuous, daring, original, magnanimous and munificent; it was also harsh, tyrannical and selfish; conceited of its own powers, loose in its moral principles and disdainful consequences."<sup>23</sup>

It may also be true, as stated by Mr. Stubbs, that "William Rufus earned the detestation of all classes of his subjects."

"Historians describe him as a strong, fierce and arrogant man, of abandoned habits, cruel, profane and avaricious."<sup>24</sup>

Never having married, he died without lawful issue.<sup>25</sup>

<sup>22</sup> Henry of Huntingdon, book 2, ch. 7, p. 238 to 240 of edi. 1853; 1 Turner's Engl., ch. 5, p. 165 to 169; Green's Short Hist., ch. 2, § 6, p. 119; Green's Hist. of Engl. Peop., book 2, ch. 2, p. 140 of vol. 1.

<sup>23</sup> 1 Turner's Engl., ch. 5, p. 146 of edi. 1825.

<sup>24</sup> 1 Stubbs's Const. Hist., ch. 10, p.

297. Such a description is in Henry of Huntingdon, book 7, p. 239 of edi. 1853.

<sup>25</sup> "Nor did he practice his infamous debauchery in secret, but openly in the light of day. He was buried on the morrow" (Aug. 3) "at Winchester." Id., pp. 239, 240.



## CHAPTER VIII.

INSTITUTIONS IN THE REIGN OF HENRY I—1100  
TO 1135.

1. *Henry chosen king; and William Giffard, the chancellor, chosen bishop of Winchester. Of the oaths by Henry at his coronation; his charter of liberties; and recall of Anselm, archbishop of Canterbury. To some extent Henry restored the laws of Edward the Confessor.*

Henry was born not earlier than 1068,<sup>1</sup> nor later than 1070; Selby, in Yorkshire, is said to be his birthplace.<sup>2</sup>

William Giffard is believed to have been in the office of chancellor in the latter part of the reign of William II, and at the commencement of that of Henry I.<sup>3</sup>

William II 'was slain on a Thursday and buried the next morning; and after he was buried, the witan, who were then near at hand, chose his brother Henry as king, and he forthwith gave the bishopric of Winchester to *William Giffard*, and then went to London.'<sup>4</sup>

"Among the few barons who were in attendance on William on the day of his death were the two Beaumonts, the earl of Warwick and the count of Meulan, Robert Fitz-Hamon and William of Breteuil. The last of these made a bold claim on behalf of Robert, but was

<sup>1</sup> Miss Strickland's *Queens of England*, vol. 1, ch. 2, pp. 44, 45; *Freem. Norm. Conquest*, vol. 4, p. 536, of N. Y. ed., 1873.

<sup>2</sup> In Dugdale's *Engl. and Wales*, vol. 7, pp. 1372, 1373, tit. *Selby*, it is said: "In the year 1069, William the Conqueror founded an abbey for Benedictine friars, which he visited in the following year for the purposes of endowment, and being accompanied by his queen, Ma-

tilda, she was here delivered of a son, who ascended the throne under the title of Henry I." *Against* "the tradition of Henry the First's birth at Selby," is Freeman's *Norman Conquest*, vol. 4, Appendix, note 2, p. 539 to 541, of N. Y. ed., 1873.

<sup>3</sup> Foss's *Biogr. Jurid.*

<sup>4</sup> *Chron. Sax.*, A. D. 1100; cited in 1 Stubbs's *Const. Hist.*, ch. 10, p. 303.

overruled by the others; the form of election was hastily gone through by the barons on the spot; and the seizure of the royal hoard in the castle of Winchester, placed in the hands of Henry the means of securing his advantage. His first act was to bestow the vacant see of Winchester on William Giffard, the chancellor, so providing himself with a strong supporter in the episcopal body. He then hastened to London, where a few prelates and other nobles were found, who, after some discussion, determined to accept him as king. The seizure of the royal treasure, on Thursday, August 2, was followed by the coronation, on Sunday, August 5. On that day a comprehensive charter of liberties was published and Anselm was recalled."<sup>5</sup>

"The oaths taken by Ethelred were" those "required of Henry: the form of his coronation has been preserved, and it contains the threefold promise of peace, justice and equity. In the letter written by the newly crowned king to Anselm to recall him to England, and to account for the rite of coronation being performed in his absence, Henry states that he has been chosen by the clergy and people of England, and repeats to the archbishop the engagement that his brother had made with Lanfranc: 'Myself and the people of the whole realm of England, I commit to your counsel and that of those who ought with you to counsel me.' The undertaking to govern well was made not only with the archbishop, as the first constitutional adviser of the crown, but with the whole nation; it was embodied in a charter addressed to all the faithful, and attested by the signatures of the witan, the paucity of whose names may perhaps indicate the small number of powerful men who had as yet adhered to him—the bishops of London and Rochester, the elect of Winchester, the earls of Warwick and Northampton, and four barons."<sup>6</sup>

Mr. Green considers Henry's charter important, "not merely as a direct precedent for the Great Charter of John, but as the first limitation on the despotism established by the Conqueror and carried to such a height by his son."<sup>7</sup> Mr. Stubbs says:

"The abuses of the late reign are specified and forbidden for the future. The church is made free from all the unjust exactions; and the kingdom from the evil customs; to the English people are *restored the laws of King Edward, with the Conqueror's amendments*; the feudal innovations, inordinate and arbitrary reliefs and amercements, the abuse of the rights of wardship and marriage, the

<sup>5</sup> Stubbs's Const. Hist., ch. 10, pp. 303, 304.

<sup>6</sup> Id. pp. 304, 305. This is the first of a series of charters of the liberties of England, prefixed to the Statutes of the Realm, published in 1810. It is also on

p. 95 to 98, of the volume of 'Select Charters' published by Mr. Stubbs in 1870.

<sup>7</sup> Green's Short Hist., ch. 2, § 6, p. 119; Green's Hist. of Engl. Peop., book 2, ch. 2, p. 140, of vol. 1.

despotic interference with testamentary disposition, all of which had been common in the last reign, are renounced."<sup>8</sup>

2. *Henry, a native king, married Matilda, descended from Anglo-Saxon monarchs. He acquired the surname of Beauclerc, or fine scholar; she shared in his love of literature. Of her death; his daughter's marriage; his son's death; and his second marriage.*

It is observed of Henry that "he was the native king, born on English soil, son of the king (not merely like Robert and William, of the duke), of the Normans."<sup>9</sup> Soon he was engaged to be married to a princess whose descent was from the Anglo-Saxon monarchs—to Matilda, or Maud, daughter of Malcom, king of Scots, by Margaret, sister of Edgar the etheling. The marriage was celebrated and the queen crowned (November 11, 1100) by Anselm, who had returned to England and resumed the administration of his diocese.<sup>10</sup>

Henry's wife had been educated at Rumsey abbey. Having there been taught the *literatoriam artem* (Ord. Vit., 702), she could sympathize with his studies.

"He became the most learned monarch of his day, and acquired and deserved the surname of Beauclerc, or fine scholar. No wars, no cares of state, could afterwards deprive him of his love of literature. The nation soon felt the impulse and the benefit of their sovereign's intellectual taste."<sup>11</sup>

<sup>8</sup> 1 Stubbs's Constitutional Hist., ch. 10, p. 305; 2 Lingard's Engl., ch. 3 pp. 106, 107. Lord Coke's language as to the Conqueror's alterations may be compared with Mr. Turner's. It is said by Lord Coke that "after the Conquest, King Henry the First, the Conqueror's son, surnamed Beauclarke, a man excellently learned, because he abolished such customs of Normandy as his father added to our common laws, is said to have restored the ancient laws of England." Preface to 3 Rep., xxi and xxii. Whereas Mr. Turner observes, "That in this act it should have been thought a popular boon for him to add to the Anglo-

Laws of the Confessor, the 'emendations which my father made with the counsel of the barons,' (Wilk. Leg. Sax., 235,) implies forcibly that William's alterations were felt to be improvements." 1 Turner's Engl., ch. 6, p. 171, and note 4.

<sup>9</sup> 1 Stubbs's Const. Hist., ch. 10, p. 306.

<sup>10</sup> 2 Lingard's Engl., ch. 3, p. 108; 1 Stubbs's Const. Hist., ch. 10, pp. 304, 306, and ch. 11, p. 342, note 1; 5 Freem. Norm. Conquest, p. 112, ed. 1873; Green's Hist. of Engl. Peop., book 2, ch. 2, pp. 140, 141, of vol. 1.

<sup>11</sup> 1 Turner's Engl., ch. 6, pp. 172, 173, and note 9. On another page, after saying "his mind was cultivated—he cher-

About "1110, Henry had betrothed his daughter, then a mere child, to King Henry of Germany. She was at once sent to her new home," and on, or before January 1, 1114, was "married and crowned at Mairz. Her husband was now Emperor."<sup>12</sup>

Her mother, the queen of England, died May 1, 1118.<sup>13</sup> William, the king's son and heir, perished by shipwreck in 1120.<sup>14</sup> In the following year (1121) the king married Adelicia (or Alice) daughter of the Duke of Louvain.<sup>15</sup>

3. *Of the adventures of Ralf (or Ranulph) the Flambard. Though not 'again the king's 'exactor' or 'placitator,' he was restored to the bishopric of Durham.*

"To satisfy the clamour of the people, Henry had committed to the Tower, Flambard, bishop of Durham,<sup>16</sup> the obnoxious minister of the late king. The prelate lived sumptuously in his confinement on the allowance which he received from the exchequer, and the presents which were sent to him by his friends; and by his wit, cheerfulness and generosity, won the good will, while he lulled the vigilance of his keepers. In the beginning of February he received a rope concealed in the bottom of a pitcher (or vessel) of wine. The knights who guarded him were, as usual, invited to dine; they drank copiously till it was late in the evening; and soon after they had lain down to rest, Flambard, with the aid of his rope, descended from the window, was conducted by his friends to the seashore and thence escaped into Normandy."<sup>17</sup>

Flambard instigated Duke Robert to pursue his claim to the Eng-

lished learning and encouraged its growth in England," Mr. Turner adds, "He loved pleasantries; and when he mixed in society, he did not suffer business to disturb his good humor." Id. p. 195.

<sup>12</sup>5 Freem. Norm. Conquest, p. 122, edi. 1873.

<sup>13</sup>Henry of Huntingdon, book 7, p. 246; Miss Strickland's Queens of England, vol. 1, ch. 2, p. 114.

<sup>14</sup>Henry of Huntingdon, pp. 248, 249; 1 Turner's Engl., pp. 188, 189; 5 Freem. Norm. Conquest, p. 129, edi. 1873; Green's Short Hist., ch. 2, § 6, p. 125; Green's Hist. of Engl., Peop., book 2, ch. 2, pp. 146, 147, of vol. 1.

<sup>15</sup>The contract of marriage was signed

April 16, 1120; the nuptials were publicly solemnized at Windsor, January 24, 1121, by Ralph, archbishop of Canterbury; afterwards, in the same month, the king and queen were crowned at Westminster. Miss Strickland's Queens of England, vol. 1, pp. 121, 122; 1 Stubbs's Const. Hist., ch. 11, p. 342; 5 Freem. Norm. Conquest, p. 130, edi. 1873.

<sup>16</sup>"The first man recorded to have dwelled as a prisoner in the Conqueror's fortress." 5 Freem. Norm. Conquest, pp. 111, 112, edi. 1873.

<sup>17</sup>Since 2 Inst. 15, there have been fuller and better accounts in 1 Turner's Engl., 174, note 12; 2 Lingard's Engl., ch. 3, p. 109; and Foss's Biogr. Jurid.

lish crown, and accompanied him in his invasion of England. There was soon an amicable arrangement; and Flambard was permitted to return to his bishopric and restored to its immunities.<sup>18</sup>

4. *Of Roger, bishop of Salisbury; and other chancellors during Henry's reign. Whether in this reign there was conduct departing from the ancient maxim, 'Quod cancellaria non emenda est.' Official position of Robert de Sigillo.*

Roger, while curate of a small church near Caen, ingratiated himself with Prince Henry.<sup>19</sup> After Henry became king, William Giffard was, so early as September 3, 1101, superseded by Roger as chancellor. Although the king gave in August, 1100, the bishopric of Winchester to Giffard, and in April, 1102, that of Salisbury to Roger, yet Giffard was present as chancellor at the signing of a convention on the 10th of March, 1103. Waldric appears as chancellor January 13, 1103-4; and there are charters in 1106, signed 'Walteri Cancellarii.'<sup>20</sup> The king being in a controversy with Archbishop Anselm and the court of Rome, the consecration of Giffard and

<sup>18</sup> The completion of his cathedral, the erection of Norham castle, the fortification of the walls of Durham, and numerous other works, among which were the endowment of the college of Christ church, where he had been dean, and the foundation of the priory of Mottisford, near Lincoln, are mentioned as proofs of his munificence. He died September 5, 1128. Foss's Biogr. Jurid.

<sup>19</sup> It is said, "by the celerity with which he dispatched the service when the prince and his followers chanced to be present." By "dexterous management of whatever business he was engaged in," he "endeared himself to Henry during his adversity." Foss's Biogr. Jurid. Mr. Stubbs speaks of Henry having Roger "into his service as steward and chaplain;" 1 Const. Hist., ch. 10, p. 312; and says, "He had attracted Henry's notice, long before he came to the throne, by his expeditious way of celebrating divine service, had been en-

listed by him as a sort of chaplain steward, and by his economy and honesty had justified the confidence reposed in him." Id., ch. 11, p. 349.

<sup>20</sup> Foss's Biogr. Jurid. Giffard, after holding the office of chancellor five times, and under three kings (the last of whom was celebrated for his discrimination), "presided over his see for nearly twenty-one years, during which period he performed many acts to make his rule remembered. He introduced monks of the Cistercian order into England, and in 1128, founded an abbey for them at Waverley, in Surrey. He erected a priory for Augustin canons at Taunton in Somersetshire. He was either the founder of, or the principal contributor to, the priory of St. Mary Overy, in Southwark, and he built the magnificent mansion there which was so long the residence of his successors when in London." He died Jan. 25, 1129. *Ibid.*

Roger as bishops seems to have been deferred until one party or the other should abandon some part of his pretensions; which was not until 1107 or 1108.<sup>21</sup>

Ranulph, sometimes called Arnulph, one of the chaplains of Henry, was raised by him to the chancellorship in 1107, and continued in this office till Christmas, 1123.<sup>22</sup> He was succeeded by Geoffrey Rufus, who was raised to the bishopric of Durham, August 6, 1133, but seems to have remained chancellor till the end of this reign.<sup>23</sup> From an entry on the roll of 31 Hen. I, Lord Campbell *infers* there was then conduct departing from the ancient maxim, '*Quod cancellaria non emenda est.*'<sup>24</sup> But Mr. Foss has discussed the subject;<sup>25</sup> and "the probabilities seem to" him "to be in opposition to the *inference* drawn."<sup>26</sup>

The official position under Henry I, of Robert de Sigillo (afterwards bishop of London), was *Clericus, or Magister Scriptorii*, and in the Red Book of the Exchequer is placed next in order to the chancellor.<sup>27</sup> By him the seal was kept during Henry the First's reign,<sup>28</sup> except when it was kept by Richard.<sup>29</sup>

Bernard, bishop of St. David's, was chancellor to Matilda, the first wife of Henry I, and Godfrey, of Bath, to his second.<sup>30</sup>

<sup>21</sup> 2 Lingard's Engl., ch. 3, p. 118.

<sup>22</sup> Then a fall from a horse caused his life to end in a few days. Foss's Biogr. Jurid.

<sup>23</sup> He does not appear to have been continued in the chancellorship by King Stephen; he died at Durham castle May 6, 1140. *Id.*

<sup>24</sup> 1 Lives of Chancellors, p. 56 edi. 1846, p. 57 edi. 1874.

<sup>25</sup> Judges of England, i, 82.

<sup>26</sup> Biogr. Jurid.

<sup>27</sup> With considerable allowances, which that king increased for Robert de Sigillo to two shillings a day, with one sextary of household wine, one seasoned simnel, one taper and twenty-four pieces of

candle." Foss's Biogr. Jurid.

<sup>28</sup> As appears from the *Constitutio Domus Regiæ*; cited in 1 Stubbs's Const. Hist., ch. 11, p. 353.

<sup>29</sup> One of King Henry's chaplains. Observing that he is "mentioned by Thynne as keeper of the seal when Ranulph was chancellor, Mr. Foss says, "In no document, however, is he so designated, and Malmesbury with greater probability calls him 'Clericus de Sigillo.' He was preferred in 1120 to the bishopric of Hereford, died at Ledbury, August 15, 1127, and was buried in his cathedral." Biogr. Jurid.

<sup>30</sup> 1 Stubbs's Const. Hist., ch. 11, p. 342.

5. *Of Justiciars; especially of Bishop Roger, of Salisbury, as the great constructor of judicial and financial organization. Comparison of what had been before, with what is in, Henry's time. Of the Exchequer; of the supreme court of justice, called the Curia Regis; and the visitation of the kingdom by justices (officers of that court). Among the justices were Geoffrey de Clinton, Ralph Basset and Richard Basset.*

Henry of Huntingdon, who from his early years was in the household of *Robert de Bloet*, bishop of Lincoln, speaks of Bishop Robert as "justiciary of all England, and much employed by Henry I in secular affairs."<sup>31</sup> In the same letter (to Walter) he mentions Osmond, bishop of Salisbury, as "succeeded by Roger, a great statesman, who is now the king's justiciary."<sup>32</sup> Mr. Stubbs, after mentioning Roger's consecration to the see of Salisbury, says, "he seems to have risen at the same time to the place of justiciar."<sup>33</sup>

"Bishop Roger, of Salisbury," acted throughout the reign as the great constructor of judicial and financial organization," and "became famous for his efficient administration of justice and the revenue."<sup>34</sup>

"Under his guidance, whether as chancellor or as justiciar, the whole administrative system was remodelled; the jurisdiction of the *Curia regis* and Exchequer was carefully organized, and the peace of the country maintained in that theoretical perfection which earned for him the title of the Sword of Righteousness."<sup>35</sup>

Although it may be concluded that under William Rufus "it was mainly for the sake of the profits that what was called justice was administered at all," yet Mr. Stubbs thinks, "a deeper and more statesmanlike view probably influenced Henry I and his great minister—the belief that a nation in which justice is done, is safer and more contented, and presents, therefore, an easier and richer body to be taxed."<sup>36</sup>

<sup>31</sup> Henry of Huntingdon, p. 302, note. The bishop died of apoplexy January 10, 1123-4. Id., pp. 303, 304.

<sup>32</sup> Id., p. 316.

<sup>33</sup> I Stubbs's Const. Hist., ch. 11, p. 349.

<sup>34</sup> Foss's Biogr. Jurid.; Stubbs's Const. Hist., ch. 10, p. 312.

<sup>35</sup> Id. ch. 11, p. 349.

<sup>36</sup> I Stubbs's Const. Hist., ch. 11, pp. 386, 387.

Although "under William the Conqueror and William Rufus, the term *Curia* generally, if not invariably, refers to the solemn courts held thrice a year, or on particular summons, at which all tenants in chief were supposed to attend," yet, "from the reign of Henry I, we have distinct traces of a judicial system,—a supreme court of justice called the *curia regis*, presided over by the king or justiciar, and containing other judges also called justiciars, the chief being occasionally distinguished by the title of '*summus*,' '*magnus*' or '*capitalis*.'"<sup>37</sup>

During Henry's reign, the whole kingdom was visited by justices (officers of the *curia regis*).<sup>38</sup> From an examination of the Great Roll of the pope, of 31 Hen. I, Mr. Stubbs ascertains that during his reign the practice of itinerant judges was observed both for financial and judicial purposes. Mr. *Stubbs* says:

"These journeys were the substitute, under the Norman kings, for the progresses of the earlier sovereigns, who, whilst moving from one of their estates to another, heard the complaints of defect of justice in the lower courts. The annual courts of William the Conqueror, who wore his crown and heard causes at Christmas, Easter and Pentecost, at Gloucester, Winchester and Westminster, a custom occasionally observed by *William Rufus* and *Henry I*, only partially answered the same purpose; and for these, towards the end of Henry's reign, a visitation of the *Curia Regis* itself seems to have been substituted."<sup>39</sup>

"In subordination to Roger, Henry raised up a set of *novi homines*, many of whom were, in nobility of blood, below the ideal standard of the ruling race. Among them Ordericus enumerates the Clintons, the Bassets and the Trussebutts, who, although not among the tenants-in-chief of Domesday, were of good Norman descent and founders of great English families."

*Geoffrey de Clinton* and *Ralph Basset* were two of Henry's principal justices; the latter founded a great legal family.<sup>40</sup>

Of these two, the first named was in 1121 or 1122, a witness to the king's charter to Westminster abbey; in 1123, chamberlain of the king; and after 1125, treasurer. In 31 Hen. I, he held pleas in no less than eighteen counties, and was justice of the forest for Huntingdonshire and sheriff of Warwickshire. He built the castle at Kenilworth.<sup>41</sup>

<sup>37</sup> I *Stubbs's Const. Hist.*, ch. 11, pp. 376, 377.

<sup>38</sup> *Id.*, pp. 313, 389, 391.

<sup>39</sup> *Select Charters*, part 4, p. 135.

<sup>40</sup> *Id.*, ch. 10, pp. 312, 313 and note.

<sup>41</sup> *Foss's Biogr. Jurid.*



*Ralph Basset*, a Norman, raised to be baron of Welden, in Northamptonshire, appears early in the reign of Henry I, as a very influential judge. He presided, in 1124, over a court of the barons held at Huncote in Leicestershire. He was justice of the forests in the counties of Norfolk, Suffolk and Surry; and in the itinera appointed for relieving the *curia regis*, not less than six counties, and probably more, were placed under his direction. Before the roll of 31 Hen. I, he died at Northampton and was there buried in the chapter house.<sup>42</sup>

His son *Richard* succeeded him in the barony of Welden, and assisted in the administration of justice in the Aula Regis. In the roll of 31 Hen. I, when his father could only have been recently dead, the same number of counties are mentioned as under the judicial superintendence of the two.<sup>43</sup> Richard is called by Ordericus Vitalis and Henry of Huntingdon '*capitalis justiciarius*,' even during the life of Bishop Roger."

From the Pipe Roll of 1130, Mr. Stubbs furnishes the names of other justices.<sup>44</sup> From Mr. Foss's work (Biogr. Jurid.) there is obtained the information below.<sup>45</sup>

<sup>42</sup> Id.; 1 Stubbs's Const. Hist., ch. 11, p. 389.

<sup>43</sup> Foss's Biogr. Jurid.

<sup>44</sup> 1 Stubbs's Const. Hist., ch. 11, p. 389, and pp. 391, 392.

<sup>45</sup> *William de Hengham* was one of four appointed in 1124 to take an assize in Norfolk; and in 1126 to try certain prisoners, in custody of the bishop of Ely, who were charged with murder.

*Walter Espec*, a baron whose principal estate was Helmsley, or Hamlake, in Yorkshire, was justice of the forest for that shire; and he and *Eustace Fitz John*, another northern baron, were, for at least two years before 31 Hen. I, justices itinerant in that county, and also in Northumberland, Cumberland, and the bishopric of Durham. *Pain Fitz John* (brother of Eustace Fitz John) is mentioned in the roll of 31 Hen. I, as a justice itinerant in the counties of Gloucester, Stafford and Northampton. With

him in both counties was *Milo de Gloucester* (earl of Hereford) sometimes called Milo Fitz-Walter, who was sheriff of Staffordshire and Gloucestershire, and justice of the forest for the former county.

*William de Albino Brito* had the county of Rutland under his care, as sheriff or fermour. He was one of the king's council, was a witness immediately after Hugh Bigot, and before Richard Basset, to the charter by which Henry, in 1134, granted the office of Great Chamberlain to Alberic de Vere, and in 31 Hen. I, held pleas in Lincolnshire and as justice of the forest in Essex.

*Richard Fitz Alured* (according to the roll of 31 Hen. I,) owed—i. e., fined—fifteen silver marks that he might sit with Ralph Basset to hold the king's pleas in Buckinghamshire. Id.

*Alberic de Vere*, the son of a Norman baron was between 1121 and 1127, a

6. *Of Henry's greatness in the council chamber; his faculty of organization; his love of order and justice. He acquired the epithet—the Lion of Justice. What he did as to local courts; privileges of towns; and maintenance of peace. His measures changed the temper of the Norman rule.*

Successful as his wars had been, Henry's "greatness showed itself less in the field than in the council chamber." Mr. Green says:

"He had little of his father's creative genius, of that far-reaching originality by which the Conqueror stamped himself and his will on the very fabric of our history. But he had the passion for order, the love of justice, the faculty of organization, the power of steady and unwavering rule, which was needed to complete the Conqueror's work."<sup>46</sup>

The peculiar epithet acquired by Henry—the Lion of Justice—announces the exertion of his wisdom and energy in that path of action which was then most essential to the improvement of his country.<sup>47</sup>

Henry "restored the working of the local courts, the hundred and the shire as they had been in King Edward's time. He granted to the towns such privileges as in the awakening of municipal life they were capable of using. He maintained good peace by severe and even-handed justice; and by strengthening the hands of Anselm and the reforming prelates who succeeded him,"<sup>48</sup> he did (after the arrange-

sheriff or portgrave of London. He acted judicially with other barons in the *curia regis*, and shared highly in the king's confidence. In 31 Hen. I, he appears to have had, in conjunction with Richard Basset, the control over eleven counties as sheriff or foermer; the name of Richard Basset invariably standing first. In 1134, there was granted to him the office of great chamberlain.

*Henry de Port* appears by the roll of 31 Hen. I, to have been one of the justices itinerant acting in Kent.

<sup>46</sup>Green's Hist. of Engl. Peop., book 2, ch. 2, pp. 143, 144, of vol. 1.

<sup>47</sup>1 Turner's Engl., 175.

<sup>48</sup>Henry of Huntingdon, in his letter

to Walter, says: "In our time flourished Lanfranc, archbishop of Canterbury; a philosopher and a politician; he was succeeded by Anselm, a wise and most religious prelate. After them we saw Ralph, who was worthy of his high dignity. Next, the see of Canterbury was filled by William, of whose merit nothing can be said, for he had none." Pp. 314, 315, of ed. 1853. Anselm died in 1109; and Ralph was appointed in 1114. Id., pp. 244, 245. In 1122, Ralph died. Id., 250. In 1123 "the king gave the archbishopric of Canterbury to William of Curboil, prior of Chick." Id., 251.

ment of the question of investiture) win to his side the most stable element of national life."<sup>49</sup>

Such measures changed the temper of the Norman rule. Though it may have remained a despotism, yet it was now a despotism regulated and held in check by the forms of administration routine.<sup>50</sup>

### 7. *Nature of the compilation called 'Leges Henrici Primi.'*

Mr. Turner says:

"The laws which were established in England during his reign and which are called in the *Præmium*, (written during his life), the *beata pacis ac liberatis exoptato guardio*, are printed from the *Textus Roffensis*, and MSS. Scaccar., in Wilkins's *Leges Sax.*, 233-283. They furnish a very detailed and comprehensive view of our internal polity and jurisprudence at that time."<sup>51</sup>

Sir James Mackintosh observes:

"So general was the confidence in the restoration of the native institutions, that it induced a private compiler to draw up a summary of Saxon law, which is still extant under the title of 'The Laws of Henry the First,' probably, as in the writer's opinion, deriving their validity from his confirmation."<sup>52</sup>

Many extracts from the civil and canon law are found in the com-

<sup>49</sup> 1 Stubbs's *Const. Hist.*, ch. 10, p. 312; ch. 11, p. 393, pp. 398, 399, and ch. 13, p. 605. The "order for the holding of the courts of the hundred and the shire" was issued between A. D. 1108, and 1112, and is in Mr. Stubbs's volume of *Select Charters*, pp. 98, 99. As to cities and towns, see 1 Stubbs's *Const. Hist.*, ch. 11, p. 403, *et seq.* The charter of Hen. I., to the citizens of London, that granted by Thurstan, archbishop of York, to Beverley, and the customs of New-Castle-upon-Tyne, are in the volume of *Select Charters*, p. 102 to 108. Observing that "the ancient charters of London (or copies of them, recited in authentic charters), exist from the time of Henry the First, but none of them contain the grant of its right of sending representatives," Mr. Turner deems it a just inference "that this constitutional right had

been established long before." He says: "There is no charter existing, and none have been known to exist, that confers the right on any of the ancient burghs. This appears to me to show that it was the ancient immemorial right of all burghs or cities, beginning with their existence, and constitutionally attached to it, and not flowing from any specific grant." *Hist. Anglo-Saxons*, book 8, ch. 4, p. 184, of vol. 3, edi. 1852.

<sup>50</sup> Green's *Hist. of Engl. Peop.*, book 2, ch. 2, p. 146, of vol. 1.

<sup>51</sup> 1 Turner's *Engl.*, ch. 6, p. 197, *note*.

<sup>52</sup> 1 Mackintosh's *Engl.*, Phila., edi. 1830, p. 113. "The so-called 'Laws of Henry the First' are not to be looked on as real statutes put forth by his authority, but they are a witness to the law as it stood in his time." 5 *Freem. Norm. Conq.*, p. 99, of edi. 1873.

pilation called 'Leges Henrici Primi.'<sup>58</sup> Mr. Stubbs speaks of the compilation, and gives extracts from it. He says:

It "is a collection of legal memoranda and records of custom, illustrated by reference to the civil and canon laws, but containing very many vestiges of ancient English jurisprudence. The date of the compilation is later than the reign of Henry I; but the absence of any reference to the judicial changes introduced by Henry II, seems to shew either that the original draft of it was made early in his reign, or that if it be later, the author was so well acquainted with the history of the early laws as to avoid anachronisms."<sup>54</sup>

8. *Of Henry's death in December, 1135. His character.*

In Normandy,<sup>55</sup> Henry had a fever of which he died on the first day of December, 1135;<sup>56</sup> after having declared (it is said) that he left all his possessions to his daughter, Matilda.<sup>57</sup>

It is observed that "with great faults, he was a great prince, and his reign was highly beneficial to his people." Mr. Turner says, his "character was marked by the discernment, the profound thought, the impenetrability, the persevering prudence, the stern inflexibility, the capacious love of power of the aspiring politician."<sup>58</sup> Mr. Stubbs considers it evident that he was "a strong ruler, with a clear view of his own interests, methodical, sagacious and far-sighted; his selfish aims dictated the policy that gave peace and order to his people."<sup>59</sup> In his conduct there may have been sometimes not only the absence of sensibility, or magnanimity, but the presence of cruelty and wickedness.<sup>60</sup> Yet "in discerning that peace had its laurels, more fruitful and not less glorious than those of war, he rose far above the level of his age, and deserves the praises of his improved posterity."<sup>61</sup>

<sup>53</sup> 1 Stubbs's Const. Hist., ch. 12, pp. 494, 495, *note*.

<sup>54</sup> Select Charters, p. 100.

<sup>55</sup> After a repast on lampreys, which disagreed with him. Henry of Huntingdon, book 7, pp. 259, 260.

<sup>56</sup> "After a reign of thirty-five years and three months." *Id.*, page 260. His "remains were brought over to England and interred within twelve days of Christmas, in the abbey at Reading, which" he "had founded and richly endowed." *Id.*, book 8, p. 263.

<sup>57</sup> 1 Turner's Engl., ch. 6, p. 193, and pp. 195, 196.

<sup>58</sup> *Id.*, pp. 193, 194.

<sup>59</sup> 1 Const. Hist., ch. 10, p. 315.

<sup>60</sup> 1 Mackintosh's Engl., p. 114 of Phila. ed., 1830. Whatever may have been the cruelty in Cardiff castle to Robert, Duke of Normandy, by an 'unnatural brother,' that brother was not William the Second, as supposed in 2 Dugdale's Engl. and Wales, p. 377, but was Henry the First.

<sup>61</sup> 1 Turner's Engl., ch. 6, p. 196.

## CHAPTER IX.

INSTITUTIONS IN THE REIGN OF STEPHEN—1135  
TO 1154.

1. *Of the nephews of Henry the first. Stephen crowned. He made promises of peace and justice, and by charter confirmed the good customs of King Edward's time, and the laws and liberties given by Henry I. Some made to him an oath of allegiance, with a conditional clause, that is, so long as he faithfully observed his engagements.*

No lawful son (or son of a son) of the Conqueror was living at Henry's death.<sup>1</sup> But there lived then more than one son of a daughter of the Conqueror.

His daughter, Matilda, had, after the death of her first husband, Henry V, emperor of Germany (without children by her), married in 1127, Geoffrey, that count of Anjou whose habit of wearing on his helmet the common broom of Anjou, the *planta genista*, gave him the title of Plantagenet;<sup>2</sup> their son, Henry, was born on the fifth of March, 1133;<sup>3</sup> and therefore was only in his third year when his grandfather died.

The Conqueror's grandson, Stephen, was son of Henry's sister, Adela, and of the earl of Blois; "Stephen's wife (the niece of Godfrey of Bouillon) was a granddaughter of Malcolm and Margaret,

<sup>1</sup> William (earl of Flanders), son of Henry's brother Robert, had, from a wound in battle, died in 1128. Henry of Huntingdon, pp. 255, 256 and 307. The year before Henry's death, that brother (Robert), in the 28th year of his captivity, died in Cardiff castle. *Id.*, pp. 242, 243, 312; 1 Turner's Engl., ch.

6, p. 193, *et seq.*; 5 Freem. Norm. Conq., pp. 116, 138, and Appendix 2, p. 567 to 569.

<sup>2</sup> Green's Hist. of Engl. Peop., book 2, ch. 2, pp. 150, 151, of vol. 1.

<sup>3</sup> 1 Stubbs's Const. Hist., ch. 12, p. 447.

and descended from the line of Cerdic in exactly the same degree as the Empress Matilda."<sup>4</sup>

For the empress and her little son preference was manifested in the lifetime of Henry the first.<sup>5</sup> But Stephen of Blois, on receiving the news of Henry's death, quickly crossed over to England.

"He hastened to London, and was there hailed by the citizens as a deliverer from the danger of a foreign yoke. Geoffrey, of Anjou, and his wife were disliked, the former as a stranger, and the latter as an imperious, self-willed, woman; the citizens of the first city in the realm might claim to exercise a prerogative voice in the election of the king, and they chose Stephen. Encouraged by this success, he passed on to Winchester, where also he was welcomed by the citizens; here he obtained with little delay the royal treasure, having by the aid of his brother, the bishop, overcome the scruples of the justiciar, Bishop Roger, of Salisbury. Thus strengthened he returned to London for formal election and coronation."—"He was crowned on St. Stephen's day."<sup>6</sup>—"A brief charter was issued by which the new king confirmed the laws and liberties that his uncle had given and the good customs of King Edward's time, and enjoined the observance of them."

Another document was issued by Stephen, at Oxford, later in 1136, after he had been joined by the earl of Gloucester and other chief members of the late king's household.

It "is attested by a large number of witnesses: eleven English and three Norman bishops; the chancellor, Roger; four earls; four great constables; four royal stewards; two grand butlers, and seven other vassals, two of whom were of the rank of count. The privileges conceded by it are chiefly ecclesiastical."—"The promise of peace and justice made at the coronation is renewed, and amplified by an undertaking to extirpate all exactions, injustice and chicanery, whether introduced by the sheriffs or by others; and to maintain

<sup>4</sup> Id., ch. 11, p. 318.

<sup>5</sup> It is stated that in 1126, at London, the council of the kingdom swore that if the king should die without a male heir, the Empress should be maintained in possession of the realm of England; that in 1131, at Northampton, a similar oath was taken; and that after the birth of her son, Henry, the prelates, earls and barons of the dominions of Henry I,

swore fealty to the Empress and her little son, whom his grandfather appointed to be king after him. Henry of Huntingdon, p. 244, note; 1 Stubbs's Const. Hist., ch. 11, p. 341.

<sup>6</sup> As to the hesitation of William, archbishop of Canterbury, and how it was overcome, see Henry of Huntingdon, p. 326 to 328, of ed. 1853. Archbishop William died within a year. Id., p. 262.

good laws and ancient and righteous custom in reference to judicial procedure generally.”<sup>7</sup>

In a subsequent assembly, Stephen produced a letter from the pope confirming his succession to the crown; and upon his granting additional liberties to the church, “the prelates, in return, renewed their oath of allegiance, but with a conditional clause which had previously been adopted by some of the lay barons, that they would be faithful to him *as long as he faithfully observed his engagements.*”<sup>8</sup>

2. *Of the archbishop of Canterbury; the Chancellor and Bishop Roger, of Salisbury, and other officers; the King's conduct to them.*

In 1138, in a synod at London, “Theobald, abbot of Bec, was made archbishop of Canterbury, with the concurrence of King Stephen.”<sup>9</sup>

Such “a visitation of the Curia Regis” as is mentioned in ch. 8, § 5, p. 156, did not occur under Stephen.<sup>10</sup> The administrative machinery of the kingdom was under the control of Roger, bishop of Salisbury; his son, known as Roger Pauper, was chancellor<sup>11</sup> of the king; one nephew, Nigel, bishop of Ely, was treasurer; and another nephew, Alexander, was bishop of Lincoln. These were in office when, in 1139, on the 24th of June, at Oxford, Stephen arrested the bishops of Salisbury and Lincoln, and the chancellor with them; and compelled them to surrender their castles.<sup>12</sup>

<sup>7</sup> Stubbs's Const. Hist., ch. 10, pp. 319, 320; Green's Engl. Peop., book 2, ch. 2, vol. 1, pp. 151, 152; ‘*Carta Stephani Regis, ex Archivis Eccl. Cathed. Exon. asservati*,’ is ‘*anno regni primo*, A. D. M. C. XXXVI.’ This faces p. 3, and Stephen's second charter is p. 4 of Stat. of the Realm, in collection of 1810, p. 4. In Mr. Stubbs's volume of Select Charters they are p. 113 to 115.

<sup>8</sup> Ric. Hagul., 314, and Mals. 101, are cited in 2 Lingard's Engl., ch. 4, p. 161. Dr. Lingard there says he is “not sure that there was anything very extraordinary in this conditional allegiance. Such clauses were usual, at least among the Anglo-Saxons.”

<sup>9</sup> So stated in book 8, p. 270, edi. 1853, of Henry of Huntingdon, who mentions Theobald as “a man worthy of all praise.” Id., p. 315.

<sup>10</sup> Select Charters, part 4, p. 135.

<sup>11</sup> He was made chancellor in the first year of Stephen's reign. Foss's Biogr. Jurid.

<sup>12</sup> Stubbs's Const. Hist., pp. 325, 326. Bishop Roger had been mainly instrumental in placing Stephen on the throne; and had (perhaps for the sake of retaining power) not shown a proper sense of the obligation under which gratitude to Henry should have laid him, as regards the succession, to Henry's daughter. Id., 326.

Roger Pauper was succeeded in the chancellorship by a person called Philip; after him was Robert de Gant.<sup>13</sup> "The shortsightedness of Stephen's policy was immediately apparent; the whole body of the clergy took umbrage at the injury done to the bishops; a council was called at Winchester, in which the strongest remonstrance was made."<sup>14</sup>

3. *Of the Queen of Henry I. How, at Arundel castle, she protected her daughter-in-law and guest, Matilda. At the end of 1139, Roger, bishop of Salisbury, died; the administration of the country ceased to work; and a long civil war began.*

The queen of Henry I and his daughter are now conspicuous. At Arundel castle Queen Adelicia was residing when, in the third year of her widowhood (1138), she became the wife of William de Albini, lord of Buckenham; and in 1139, when Matilda, daughter of Henry by his first marriage, became her guest. As to Stephen's course to Matilda, historians vary in their accounts; one stating that so soon as he was informed of Matilda being in Arundel castle, he began a rapid march thither, and pushed his operations with such spirit as alarmed the royal ladies.

Adelicia "sent messengers to entreat his forbearance, assuring him 'that she had admitted Matilda not as *his* enemy, but as her daughter-in-law and early friend, who had claimed her hospitality, which respect for the memory of her late royal lord, King Henry, forbade her to refuse; the same consideration would compel her to protect her while she remained beneath the shelter of her roof.' Adelicia added 'that if he came in hostile array against her castle of Arundel, with intent to make Matilda his prisoner, she must frankly say, that she was resolved to defend her to the last extremity, not only because she was the daughter of her late dear lord, King Henry, but as the widow of the Emperor Henry, and her guest;' and she besought Stephen 'by all the laws of courtesy and the ties of kindred, not to place her in such a painful strait as to compel her to do anything against her conscience.' In conclusion, she requested with much earnestness 'that Matilda might be allowed to leave the castle and retire to her brother.' Stephen acceded to the proposal; the siege

<sup>13</sup> Foss's Biogr. Jurid.

<sup>14</sup> Stubbs's Const. Hist., ch. 10, p. 326.



was raised, and the empress proceeded to join her adherents at Bristol."<sup>15</sup>

"At the end of the year the bishop of Salisbury died;<sup>16</sup> the bishop of Ely was banished, and the bishop of Winchester, as soon as Stephen fell into difficulties, declared himself on the side of the empress. The arrest of Bishop Roger was perhaps the most important constitutional event that had taken place since the Conquest; the whole administration of the country ceased to work, and the whole power of the clergy was arrayed in opposition to the king. It was also the signal for the civil war which lasted, with more or less activity, for fourteen years."<sup>17</sup>

4. *Of Henry's daughter, Matilda, after 1140. Of Oxford as a seat of learning, where at a period of brute force the antidote appeared in the systematic teaching of the law; in 1149 Vacarius began his teaching. Of Henry, son of Matilda, and grandson of Henry I; treaty in 1153, between Stephen and Henry; death of Stephen in 1154.*

Matilda was solemnly received in the cathedral church of Winchester, March 3, 1141; but no attempt was made to crown her. "The legate himself simply proposed that she should be elected Lady of England and Normandy."<sup>18</sup> "Countess, queen and empress in other lands, in England the only title that she bears is Lady."<sup>19</sup> Her son, Henry, was brought to England when he was eight years old, to be trained in arms.<sup>20</sup>

<sup>15</sup> Miss Strickland's *Queens of England*, vol. 1, p. 135 to 138, and also p. 149, of Phila. ed., 1857. For further information there may be reference to 1 Turner's *Engl.*, ch. 7, p. 207; 2 Lingard's *Engl.*, ch. 4, pp. 170, 171; 1 Stubbs's *Const. Hist.*, p. 326, note 3; 5 *Freem. Norm. Conquest*, pp. 194, 195, ed. 1873.

<sup>16</sup> 1 Stubbs's *Const. Hist.*, ch. 10, p. 326. The day mentioned in a note is Dec. 11; Mr. Foss says Dec. 4. He observes that the bishop "was seated at Salisbury more than thirty-two years; his remains were deposited there, and his memory was regarded with such high estimation that he is usually named with the addition of 'Magnus.'" *Biogr. Jurid.*

<sup>17</sup> 1 Stubbs's *Const. Hist.*, ch. 10, p. 326.

<sup>18</sup> What is said in 1 *Hall. Mid. Ages*, ch. 7, p. 415, should be compared with 2 Lingard's *Engl.*, ch. 4, p. 173 to 176. The language of the text is according to 1 Stubbs's *Const. Hist.*, ch. 11, pp. 339, 340.

<sup>19</sup> 5 *Freem. Norm. Conquest*, pp. 203, 204, ed. 1873.

<sup>20</sup> 1 Stubbs's *Const. Hist.*, ch. 12, p. 448. "He had stayed four years in England (1142-1146) safe in his uncle's fortress of Bristol, when his father, now the acknowledged Duke of the Normans, sent for him to tarry with him at least for a while." 5 *Freem. Norm. Conquest*, p. 216, ed. 1873.

"Eight years after her first coming to England as a claimant for its crown, the empress, tired of the wretched struggle, withdrew to the continent; and in the next year, her brother and chief champion, earl Robert, died."<sup>21</sup>

"The two older characters of Oxford, as a great military post, and as a special place for great national assemblies, both come out strongly in Stephen's time. To these characters the border town now began to add the new one which it has ever since kept, that of a *seat of learning*. In the days of Henry (1133), we hear of the first public lectures on divinity; in the days of Stephen, amid the clash of arms, we find the first beginning of studies of a more general kind; *amid the special reign of brute force, the antidote appeared in the first systematic teaching of the science of law*. In Henry's days, the lectures of the Briton, Robert Pulan, who rose to high place at the Roman court, made the first beginnings of a faculty of theology. In Stephen's days, but not till the crowned Augusta had left the land (1149), *Vacarius began his first teaching of the imperial law*."<sup>22</sup>

Henry, son of Matilda, and grandson of Henry I, was in 1149, knighted by his great-uncle, David, king of Scots. Henry, in 1151, went back to the continent and received Normandy from his father; and upon his death soon after, succeeded him in Anjou. 1151 is also mentioned as the year of the death of Adelicia, queen of Henry's grandfather; and as the year of the death of Matilda, Stephen's queen.<sup>23</sup> In 1152 Henry was married to Eleanor (of Aquitaine), who had been divorced from Louis VII, of France, but six weeks. Having by this marriage added to his dominions Poitou and Guienne, Henry obtained a fleet, with which he embarked in May, 1153, for England, where he raised a native army. There was some warfare; but a decisive battle was avoided, "for Stephen was convinced of his weakness, and Henry was now, as ever, economical of

<sup>21</sup> Id., p. 209.

<sup>22</sup> Id., pp. 213, 214; 1 Stubbs's Const. Hist., ch. 12, p. 494, *note*. See *post* ch. x, § 3.

<sup>23</sup> 5 Freem. Norm. Conquest, p. 216 to 219. On the latter page, in note 2, it is said, "Matilda died in 1152;" but Miss Strickland states that she died May 3, 1151, at Heningham castle, in Essex, the mansion of Alberic de Vere; and was interred in the then newly erected

abbey of Feversham. Queens of England, vol. 1, p. 161, of Phila. ed., 1857. In same vol., pp. 140, 141, it is stated as to Adelicia's death, that "the annals of Margon date this event in the year 1151;" and that "the two most unfortunate of the queens of England, Anne Boleyn and Katharine Howard, were the lineal descendants of Adelicia, by her second marriage with William de Albini."

human life." After some negotiation there was at Wallingford, in November, 1153, a treaty of peace; by which Stephen "adopted Henry as his heir of the kingdom of England;" Henry giving up present possession of the throne in consideration of the right of succession.<sup>24</sup>

In October, 1154, Stephen fell sick at Dover, and "died eight days before the feast of All Saints (24th of October)," <sup>25</sup> "leaving the throne (for the first time since the Conquest, without a competitor) to the great sovereign who succeeded him."

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## CHAPTER X.

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### DESPOTIC POWER IN THE REIGN OF THE NORMAN CONQUEROR AND HIS SONS. RULES OF LAW AND MODES OF PROCEEDING BEFORE THE NORMAN CONQUEST, COMPARED WITH WHAT EXISTED DURING THE NORMAN PERIOD.

1. *Despotic power in the reigns of the Norman Conqueror and his sons. Beneficial influence of Anselm; the English clergy the basis of Anselm's strength.*

"Each tenant was held as bound to appear, if needful, thrice a year at the royal court, to pay a heavy fine, or rent, on succession to his estate, to contribute aid in case of the king's capture in war or the knighthood of the king's eldest son, or the marriage of his eldest

<sup>24</sup> Henry of Huntingdon, book 8, p. 289 to 295; 1 Turner's Engl., ch. 7, p. 112; 2 Lingard's Engl., ch. 4, pp. 183, 184; Miss Strickland's Queens of England, p. 173 to 175, edi. 1857; 1 Stubbs's Const. Hist., ch. 10, pp. 331, 332, and ch. 12, p. 448; 5 Freem. Norm. Conquest, p. 214 to 220; Green's Hist. of Engl. Peop., book 2, ch. 2, pp. 159, 160, of vol. 1.

<sup>25</sup> He was interred in the abbey of Faversham, near his wife and son. Henry of Huntingdon, book 8, p. 296. It is stated that "at the dissolution of the abbey under Henry VIII, his tomb was opened, the leaden coffin was melted down, and the bones were cast into the sea." 2 Lingard's Engl., ch. 4, p. 184, note.

daughter. An heir who was still a minor, passed into the king's wardship, and all profit from his lands went, during the period of wardship, to the king. If the estate fell to an heiress, her hand was at the king's disposal, and was generally sold by him to the highest bidder. These rights of 'marriage' and 'wardship' as well as the exaction of aids at the royal will, poured wealth into the treasury, while they impoverished and fettered the baronage."<sup>1</sup>

The king "is in fact despotic, for there is no force that can constitutionally control him or force him to observe the conditions to which, for his own security, or for the regular dispatch of business, he may have been pleased to pledge himself."<sup>2</sup> However such power in the crown, may have been restrained under the Conqueror by a sense of duty, it became a despotism in the hands of his son, William.<sup>3</sup> How far there was renunciation in the charter of Henry may be seen in chapter viii, § 1, p. 150. Mr. Stubbs observes, There was a time "for Lanfranc and Anselm, as well as for William of Normandy and Henry of Anjou."<sup>4</sup> He says:

"The churches were schools and nurseries of patriots; depositories of old traditional glories and the refuge of the persecuted. The English clergy supplied the basis of the strength of Anselm when the Norman bishops sided with the king. They trained the English people for the time when the kings should court their support and purchase their adherence by the restoration of liberties that would otherwise have been forgotten. The unity of the church was, in the early period, the only working unity; and its liberty, in the evil days that followed the only form in which the traditions of the ancient freedom lingered. It was again to be the tie between the conquered and the conquerors; to give to the oppressed a hold on the conscience of the despot; to win new liberties and revive the old; to unite Normans and Englishmen in the resistance to tyrants, and educate the growing nation for its distant destiny as the teacher and herald of freedom to all the world."<sup>5</sup>

2. *Of the rules before the Conquest and during the Norman period as to tenancy by the curtesy of England, and tenancy in dower.*

Of tenancy by the curtesy, it has been said, "it was called the

<sup>1</sup> Green's Hist. of Engl. Peop., book 2, ch. 2, p. 136, of vol. 1.

<sup>2</sup> I Stubbs's Const. Hist., ch. 11, p. 338.

<sup>3</sup> Green's Hist. of Engl. Peop., book 2, ch. 2, p. 136, of vol. 1.

<sup>4</sup> I Stubbs' Const. Hist., ch. 8, p. 244.

Of Lanfranc is given some account in ch. 6, § 9, p. 136; of Anselm, a beautiful picture in Green's Hist. of Engl. Peop., book 2, ch. 2, p. 137, *et seq.*, of vol. 1.

<sup>5</sup> I Stubbs's Const. Hist., ch. viii, pp. 245, 246.

law of England because it was invented in England, on behalf of poor gentlemen who married gentlewomen, and had nothing wherewith to support themselves after their wives' death." But Mr. Horwood<sup>6</sup> thinks "it was probably derived from the Normans, whose customs favoured in like manner a husband who had a living child by his wife who was seized of real estate."<sup>7</sup> It is deemed useless to enlarge here upon what is said as to this tenancy, and as to tenant in dower, in 2 Bl. Com., 126, *et seq.*, and 2 Wooddesson, Lect., p. 18, *et seq.*

3. *The cases of Collingwood v. Pace, 1 Ventr.; 414, and Blackborough v. Davis, 1 P. Wms., 50, examined in connection with 1 Spence's Eq., book 1, ch. 4, pp. 24, 25, as to the law of descents of Britons, Romans, Germans, Normans and English.*

Touching the succession of the father to the purchase of his son, it is said: 1, that "according to the Jews, for want of issue of the son, the father succeeds, excluding the brother;"<sup>8</sup> "but the mother was wholly excluded;" 2, "According to the Greeks, the provision for the succession of the father is left doubtful."<sup>9</sup>

A descent of lands in England must be ruled according to the laws of England.<sup>10</sup> According to those laws, as they were in Lord Hale's time, "the son dying without issue, or brother or sister, the father cannot succeed, but it descends to the uncle."<sup>11</sup> This had not always been so in the British isle.

Lord Coke speaks of "the antiquity of descents which the Germans had, agreeable with the *ancient laws of the Britons, continued in England to this*" (his) "*day.*"<sup>12</sup> But as intimated in ch. 1, § 11, p. 29, Lord Coke has not sufficiently recognized the fact that in the

<sup>6</sup> Editor and translator of Year Books of 20 and 21 Edward 1.

<sup>7</sup> Id., p. xx, of preface; citing Grand Coustumier, cap. 121.

<sup>8</sup> The "construction of the Jewish Doctors upon Num. 27," and "Selden *de Successionibus* Hebr. Cap., 12," are cited by Hale, C. B., in *Collingwood v. Pace*, 1 Ventr., 419.

<sup>9</sup> Petit Leges, 1, 6, fol. 6; cited in S. C., 1 Ventr., 414.

<sup>10</sup> S. C., 1 Ventr., 415; 1 Lev., 59.

<sup>11</sup> Lord Hale added, "It is a maxim of the English law, an inheritance cannot lineally ascend." *Collingwood v. Pace*, 1 Ventr., 415; *Cowper v. Cowper*, 2 P. Wms., 734.

<sup>12</sup> 2 Inst., 7.

ancient laws of the Britons, some alteration was made by some conquerors, 'especially the Romans.' *Hale*, C. B., said:

"According to the Romans or civil law, by the construction of the twelve tables, the father succeeds in the purchase of the son for want of issue of the son, under the title of *Proximus Agnatus*; and accordingly was their usage, though my Lord Coke supposed the contrary. (Co. Lit., 5.) But to settle all, the Institutes of Justinian, lib. 3, tit. 3, in an authentic collection, 8 tit., *de hæred. ab intestato venientibus*, the son dying without issue, his brothers and sisters, father and mother do succeed him, in a kind of coparceny, as well to lands as goods."<sup>13</sup>

It would seem that Mr. Spence did not have this in his view when he wrote the fourth chapter of his first book;<sup>14</sup> and did not advert to Lord Hale's further statement:

That "according to the customs of Normandy, which, in some things have a cognition with the laws of England, the son dying without issue, his brothers are preferred before the father; but the father is preferred before the uncles."<sup>15</sup> . . . . .

Nor did Mr. Spence have in view a pertinent opinion of Lord *Holt* in *Blackborough v. Davis*, 1 P. Wms. 50. That great chief justice of England observed:

"That by the ancient laws here, both before and at the Conquest, all the descendants, sons and daughters in general, did inherit as well the real as personal estate of the ancestor, equally, and in a like proportion."<sup>16</sup>—"In process of time new laws were introduced; and the change seems to have begun *tempore Henrici Primi*, when the females, in case there were males, were excluded from the inheritance of the real estate."<sup>17</sup>—"But at that time, if a child died without issue, the land went to the father or mother in preference to any of the collateral line."<sup>18</sup>—"This law of succession did not continue long,

<sup>13</sup> *Collingwood v. Pace*, 1 Ventr., 414.

<sup>14</sup> 1 Spence's Eq., pp. 24, 25.

<sup>15</sup> *Collingwood v. Pace*, 1 Ventr., 415.

<sup>16</sup> *Holt*, C. J., observes that "so it appears in Selden's Eadmerus 184; Lambard's Saxon Laws, 36 fo. 167. *Si quis intestatus obierit, liberi ejus hæreditatem equaliter dividant, &c.*" 1 P. Wms. 50.

<sup>17</sup> But the males inherited equally all the socage lands. Glanville lib. 7, cap. 3; cited 1 P. Wms. 50.

<sup>18</sup> As you may see in Lambard 202, 203, *inter leges Henrici Primi*, cap. 70.

*Si quis sine liberis decesserit, pater aut mater ejus in hæreditatem succedat, vel frater et soror si pater et mater desint; si nec hos habeat, soror patris vel matris, et deinceps qui propinquiores in parentela fuerint hæreditario succedant; et dum virilis sexus extiterit, et hæreditas abinde sit, femina non hæreditat.* This law is cited by Lord Coke in his comment on Littleton, fo. 11, where he says he never read any opinion in any book, old or new, against the maxim that inheritances cannot lineally

being altered betwixt the time of Henry I and Henry II, when the father and mother were excluded and the inheritance carried over to the collateral line."<sup>19</sup>—"This alteration was made only as to the real estate, and did not extend to the personal estate; for as to that, the father and mother had always the preference before the brothers and sisters, which" (Lord *Holt* observes) "is a plain demonstration that they were esteemed nearer of kin."<sup>20</sup>

The reign of Justinian (who was proclaimed emperor about August 1, 527), ended in 565, as mentioned in ch. 2, § 2, p. 37. Admitting that new laws were introduced in the latter end of Justinian's reign, Lord *Holt* states their effect:

He observes, "they were such as had been in ancient practice in the Prætorian court, viz., the brothers and sisters were let in to share with the father and mother; but all other collaterals, more remote, were excluded; and the grandfather and grandmother were preferred before the uncles and aunts;" he mentions that "it appears from Ridley's view of the civil law (page 63), that the grandmother, &c., of the ascending line, to the utmost degree, was anciently preferred before the nearest collaterals."<sup>21</sup>

According to Lord *Holt*, "this rule of succession in the ascending line is agreeable to the laws of other nations; for by the constant practice of the Jewish nation, for want of issue of the son, the father succeeded to the purchase of the son, excluding the brother, according to the construction of the Jewish doctors upon the xxvii chapter of Numbers."<sup>22</sup>—"And, indeed, by all laws (excepting that of Justinian) the father was preferred to the brother."<sup>23</sup>

Lord *Holt* says, "the civil law obliges us here, only as it has been anciently received, and it could not have been received *tempore Henrici Primi*, who lived about the year of our Lord 1100; for that the works of Justinian were first published about *anno dom.* 560, and were practised about forty years, after which they were totally neglected in the empire for 500 years."<sup>24</sup>

ascend but only in *Libro Rub.*, cap. 70. See 1 P. Wms. 50; where *Holt*. C. J., referring to the time of Coke's comment, observes that 'Lambard was not then published.'

<sup>19</sup> Glanv. lib. 7, cap. 1, 2, 3, 4; cited by *Holt*, C. J., in P. Wms. 50, 1 Ventr. 415.

<sup>20</sup> *Holt*, C. J., adds, "and then, by the like reason, the grandmother must be preferred before the aunt." 1 P. Wms. 51.

<sup>21</sup> "But that," says *Ld. Holt*, "may now

be altered by the statute of Car. 2, which prefers the next of kin, tho' collateral, before one, tho' lineal that is more remote." 1 P. Wms. 51.

<sup>22</sup> "As you find it in Selden, De Successionibus *apud Hebraeos*, cap. 12;" cited 1 P. Wms. 52.

<sup>23</sup> 1 P. Wms. 52.

<sup>24</sup> And new laws were set up by the emperor Basilius, which were followed till the taking of Constantinople, *anno* 1453. 1 P. Wms. 52.

4. *Definition of justice in Justinian's Pandects; id quod semper æquum et bonum jus dicitur; suum cuique tribuere. Copy of the Pandects discovered at Amalfi about 1137; in less than ten years afterwards, Vacarius read lectures on civil law, at Oxford. Result of its study. Also of the canon law.*

According to the Pandects—

*"Justitia est constans et perpetua voluntas jus suum cuique tribuendi. Jus pluribus modis dicitur. Uno modo cum id quod semper æquum et bonum, jus dicitur; ut est jus naturale. Juris præcepta sunt hæc; honeste vivere, alterum non lædere, suum cuique tribuere."*<sup>25</sup>

For a long time "the text of the Pandects" was "almost wholly lost." Accident led, some time about the year 1137, to the discovery of a complete copy of them at Amalfi, a town in Italy, near Salerno."<sup>26</sup> With that discovery, "the study of the civil law revived."<sup>27</sup>

<sup>25</sup> Dig. Lib. 1, tit. 1; cited in 1 Story's Eq., ch. 1, § 1, p. 2 of 12th ed. (1877.)

<sup>26</sup> 'Joannes Seldeni ad Fletam Dissertatio,' ch. 6, §§ 2, 3, p. 118 to 130 of translation in 1771; Selden's notes on Fortescue, ch. 18, 19; Selden on Tithes 490; and Lib. 1, ch. 5 of Dr. Duck's treatise *de usu et autoritate juris civilis Romanorum*, are cited in 1 P. Wms. 52, 53. Pertinent also are 1 Ld. Raym., 684, 1 Salk. 251, Com. 96. Dr. Duck's treatise is highly commended by Mr. Charles Butler in Horæ Juridicæ Subsecivæ, ch. 7, p. 72 (of Phila. ed. 1808). From Amalfi the copy found its way to Pisa, and Pisa having submitted to the Florentines in 1406, the copy was removed in great triumph to Florence. By the direction of the magistrates of the town it was immediately bound in a superb manner and deposited in a costly chest. This copy of it is generally called the Florentine Pandects. Formerly they were shewn only by torch light, in the presence of two magistrates, and two Cistercian monks, with their heads uncovered. They have been successively collated by Politian, Bolignini, and Antonius Augustinus; an exact copy of

them was published in 1533 by Franciscus Taurellus." Id., p. 62. Mr. Charles Butler remarks that "it should be accompanied with the treatise of Antonius Augustinus, on the proper names in the Pandects, published by him at Taragona, in 1579. About the year 1710, Henry Brenchman, a Dutchman, was permitted, at the earnest solicitation of our George the first, to collate the manuscript. He employed ten years upon it, and in the investigation of various topics of literature connected with the Justinianean Code. His elegant and curious *Historia Pandectarum*, published at Utrecht, in 1712, gives an interesting account of his labours; and shews, like the labours of Wetstein and Mill, that great force of imagination, exquisite taste, minute and patient investigation, and the soundest judgment, may be found in the same mind."—"Brenchman refers" the Florentine manuscript "to the sixth century, a period not very remote from the era of Justinian." *Ibid.*

<sup>27</sup> Id., p. 66; Joannes Seldeni ad Fletam Dissertatio, ch. 6, § 2 to § 5, p. 118 to 138 of translation in 1771.



About the time that the emperor Lotharius founded public lectures of the Justinian and other Roman laws, they were brought to England by some of the attendants or household of Theobald, lately abbot of Bec, and now archbishop of Canterbury. In his (Theobald's) time, and in the reign of King Stephen, Roger Vacarius, a monk of Bec, read public lectures on those laws until the reading was prohibited by an edict in 1149; after which, upon the death of Lethardus, abbot of Bec, Roger became his successor.<sup>28</sup>

Mr. Hume, who thought "the period in which the people of Christendom were the lowest sunk in ignorance," was "about the age of William the Conqueror," and that "from that era the sun of science, beginning to reascend, threw out many gleams of light," speaks of events which tended to the improvement of the age, and observes, that perhaps there was none which tended further to such improvement than "the accidental finding of a copy of Justinian's Pandects" "in the town of Amalfi." He says:

"The ecclesiastics who had leisure, and some inclination to study, immediately adopted with zeal this excellent system of jurisprudence, and spread the knowledge of it throughout every part of Europe. Besides the intrinsic merit of the performance, it was recommended to them by its original connection with the imperial city of Rome, which, being the seat of their religion, seemed to acquire a new lustre and authority by the diffusion of its laws over the western world. In less than ten years after the discovery of the Pandects, Vacarius, under the protection of Theobald, archbishop of Canterbury, read public lectures of civil law in the university of Oxford; and the clergy everywhere, by their example, as well as exhortation, were the means of diffusing the highest esteem for this new science. That order of men, having large possessions to defend, was in a manner necessitated to turn their studies towards the law; and their properties being often endangered by the violence of the princes and barons, it became their interest to enforce the observance of general and equitable rules, from which alone they could receive protection. As they possessed all the knowledge of the age, and were alone acquainted with the habits of thinking, the practice, as well as science of the law, fell mostly into their hands."<sup>29</sup>

<sup>28</sup> *Joannes Seldeni ad Fletam Dissertatio*, ch. 7, § 1 to 7, p. 139 to 185 of translation in 1771; *Horæ Juridicæ Subsecivæ* vii, p. 71; 1 Turner's Engl., ch. 8, p. 226; 2 Lingard's Engl., ch. 5,

p. 21; 1 Stubbs's Const. Hist., ch. 12, p. 494, note 1; Green's Short Hist., ch. 3, § 4, p. 157.

<sup>29</sup> 2 Hume's Engl., ch. 23, pp. 549, 550 of N. Y. edi. 1850.

Dr. Lingard states that "among the students and admirers of the Pandects was Gratian, a monk of Bologna, who conceived the idea of compiling a digest of the *canon* law, on the model of that favorite work; and soon afterwards, having incorporated with his own labours the collections of former writers, he gave his '*decretum*' to the public in 1151. From that moment the two codes, the civil and canon laws, were deemed the principal repositories of legal knowledge; and the study of each was supposed necessary to throw light on the other."<sup>30</sup>

Mr. Hume observes that "though the close connection which, without any necessity," the clergy formed between the canon and civil law, begot a jealousy in the laity of England, and prevented the Roman jurisprudence from becoming the municipal law of the country, as was the case in many states of Europe, a great part of it was secretly transferred into the practice of the courts of justice, and the imitation of their neighbors made the English gradually endeavour to raise their own law from its original state of rudeness and imperfection."

"The sensible utility of the Roman law, both to public and private interest, recommended the study of it at a time when the more exalted and speculative sciences carried no charms with them; and thus the last branch of ancient literature which remained uncorrupted, was happily the first transmitted to the modern world. For it is remarkable that in the decline of Roman learning, when the philosophers were universally infected with superstition and sophistry, and the poets and historians with barbarism, the lawyers, who in other countries are seldom models of science or politeness, were yet able, by the constant study and close imitation of their predecessors, to maintain the same good sense in their decisions and reasonings, and the same purity in their language and expression."<sup>31</sup>

As to the study of the Roman law, there are also observations by Sir James Mackintosh<sup>32</sup> and Mr. Stubbs. The latter says:

"The revived study of the Roman law which had reached Oxford in Stephen's time, although it never had the effect of Romanizing the English common law, had, as an instrument of education, a great bearing on the spread of orderly and equitable ideas of jurisprudence. The rapid growth of the universities of Paris and Oxford, which were the outward expression of the life of early scholasticism,

<sup>30</sup> 2 Lingard's Engl., ch. 5, p. 21. Of the celebrated *Decretum Gratiani*, or the *Concordia Discordantium Canonum*, Mr. Charles Butler observes that it "abounds with errors;" that learned men have been engaged in its correction; but that "several faulty passages still remain in the work," and "have been pointed out by Antonius Augustinus, the archbishop

of Tarragon, in his learned and entertaining dialogue on the Emendation of Gratian" *Horæ Juridicæ Subsciscivæ*, pp. 113, 114 of Phila. edi. 1808.

<sup>31</sup> 2 Hume's Engl., ch. 23, pp. 509, 510 of N. Y. edi. 1850.

<sup>32</sup> 1 Mackintosh's Engl., pp. 148, 149 of Phila. edi. 1830.

conducted to the maintenance in the educated class of an ideal of free government, drawn from ancient Greek and Roman history, which, although never likely to be realized in detail, tended to make tyranny such as that of *William Rufus* impossible.”<sup>33</sup>

5. *Of the ancient national militia, which subsisted side by side with the county court and hundred court through the Norman period. Hatred towards mercenaries in Stephen's time. Measures at Wallingford in 1153.*

The obligation (on all freemen possessing land allodially) to military service in defence of the country or of peace, survived the allodial system and was not merged in the military machinery of feudalism. The *hus-carls* of Canute, on the other hand, were the germ of a standing army, and an anticipation of the system of fighting by mercenaries, which was adopted by William the Conqueror and the Norman kings on account of the insufficiency of the feudal levies. Neither the feudal levies, which were unmanageable and precarious, nor the mercenaries, who were intolerable to the people, were available for the purposes served by the ancient national militia; and that body—which was the armed English people—subsisted side by side with the county court and hundred court through the Norman period. It was this force, which, fighting under the banner of Archbishop Thurstan—who had called up every parish priest at the head of his parishioners—had won the battle of the Standard. The hatred of the English towards mercenaries reached a climax in the time of Stephen.<sup>34</sup> The scheme at Wallingford for the restoration of order, embraced in its measures the following:

(4.) “The king is to restock the desolate country, employ the husbandmen, and, as far as possible, restore agriculture and replace the flocks and herds of the impoverished farmers.

(6.) “The jurisdiction of the sheriffs is to be revived and men are to be placed in the office who will not make it a means of gratifying private friendship or hatred, but will exercise due severity, and will give every man his own; thieves and robbers are to be hanged.

(7.) “The armed forces are to be disbanded and provided for; ‘the knights are to turn their swords into plough-shares and their spears into pruning-hooks.’”<sup>35</sup>

<sup>33</sup> Select Charters, part 4, p. 118.

434.

<sup>34</sup> Select Charters, pp. 146, 147; 1 Stubbs's Const. Hist., ch. 11, p. 431 to

<sup>35</sup> 1 Stubbs's Const. Hist., p. 334.

6. Of the '*Tractatus de Legibus et Consuetudinibus Regni Angliæ*,' whereof Ranulph de Glanville<sup>36</sup> is considered the author. Conclusion of Mr. Turner from a passage in this treatise. What is extracted from it by Mr. Stubbs.

This treatise (first printed in 1554) is spoken of as "the earliest and most ancient work on the subject of English jurisprudence from which any clear and coherent account of it is to be obtained."<sup>37</sup> From a passage in it as to English laws *not written*,<sup>38</sup> Mr. Turner concludes:

"That these *unwritten* laws were not mere customs, as the common law of England has been sometimes erroneously called, but the actual enactments of the national council of England, and as these principles, from which the ancient interpreters of the law deduced their statements of the royal and parliamentary power in England are not likely to have originated after the Norman Conquest, we may consider them as describing to us some important features of the Anglo-Saxon cyning and of the Anglo-Saxon witenagemots."<sup>39</sup>

Mr. Stubbs, in one of his volumes, extracts from Glanville's work, "such illustrations of the system of recognition by jury as throw light on the principles of representation and election existing in the legal system before they began to be applied to self-government and to the constitution of the common National Council; with a few casual notices of the condition of villeins and the privileges of boroughs and franchises."<sup>40</sup>

<sup>36</sup> Born at Stratford, in Suffolk. He was a grandson of a baron of the same name, whose possessions were in the counties of Norfolk and Suffolk, and younger son of William de Glanville, and had raised himself to a considerable position before the death of Bartholomew, his eldest brother; on which event he succeeded to the barony. Foss's Biogr. Jurid.

<sup>37</sup> P. xvii to xx of Beames's preface to translation of Glanville, edii, 1812; Green's Hist. of Engl. Peop., book 2, ch. 3, p. 171 of vol. 1.

<sup>38</sup> Which (since Mr. Beames wrote, p. xxxix of the preface to his translation of Glanville), Mr. Turner has rendered thus: "It will not seem absurd that those English laws should be called *Laws*, although not written, which have been promulgated on doubtful things, and in council determined by the advice of the proceres, and acceding authority of the prince." Turner's Hist. of Anglo-Saxons, book 8, ch. 3, p. 144 of vol. 3.

<sup>39</sup> Id.

<sup>40</sup> Select Charters, p. 153 to 157.

Mr. Stubbs, in the volume in which he speaks of the status of the villein in the Norman period,<sup>41</sup> observes that "Glanvill's preface to his book on the laws is adapted from the Institutes of Justinian,"<sup>42</sup> and that it was during the last years of Henry II, that Glanvill "drew up or superintended the composition of the *Liber de Legibus Angliæ*, on which our knowledge of the Curia Regis in its earliest form depends."<sup>43</sup>

7. *Jurisdiction of the probate of wills. Where it was in Anglo-Saxon times; and how it was changed in the Norman period.*

Glanville said, "Pleas concerning testaments ought to be agitated before the ecclesiastical judge, and decided according to the course of law, on the testimony of those who were present at the time of the making of the will."<sup>44</sup> Mr. Stubbs says:

"In Anglo-Saxon times there seems to have been no distinct recognition of the ecclesiastical character of" causes testamentary, or as to the administration of an intestate's goods; "and even if there had been they would have been tried in the county court. Probate of wills is also in many cases a privilege of manorial courts which have nothing ecclesiastical in their composition, and represent the more ancient moots, in which no doubt the wills of the Anglo-Saxons were published. As, however, the testamentary jurisdiction was regarded by Glanville as an undisputed right of the church courts, the date of its commencement cannot be put later than the reign of Henry I, and it may possibly be as old as the division of lay and spiritual courts."<sup>45</sup>

The subject is further treated of in this volume in ch. 29, § 6.

8. *Of the Norman king as the source of justice; the resource on appeal for equity. Of the justiciar, chancellor and other functionaries who are ministers of state and members of the Curia Regis and Exchequer, and as such exercise judicial functions. Also of the Witenagemot of the kingdom, now subsisting under the title of the Great Court or Council.*

The notice in chapter 5, of institutions in Anglo-Saxon times,

<sup>41</sup> 1 Const. Hist., ch. 11, p. 428 to 431. translation.

<sup>42</sup> Id., ch. 12, p. 494, note 1.

<sup>43</sup> Id., p. 491.

<sup>44</sup> Book 7, ch. 8, p. 168 of Beames's

<sup>45</sup> 3 Stubbs's Const. Hist., ch. 19, pp. 344, 345.

embraced in § 7, p. 112, "the witenagemot, or assembly of the wise;" in § 8, p. 117; the chancellor; and in § 9, p. 119, "the connection between the administration of the king's peace and his function as the fountain of justice." The Norman period was the epoch of the growth of a new administrative system, having the source of its strength in the royal power. Under this system it is from the person, the household, the court and the council of the king, that all constitutional power radiates.

The king "is the source of justice and *the ultimate resource on appeal for such equity as he is pleased to dispense*; the supreme judge of his own necessities and of the method to be taken to supply them."<sup>46</sup>

The great officers of the household form the first circle round the throne, and furnish the king with the first elements of a ministry of state.<sup>47</sup> Duties which originally belonged to some of them were afterwards "falling into the hands of another class of ministry;"—"the justiciar, the treasurer and the marshal take their places besides the high steward, the chamberlain and the constable."

"The chief minister of the Norman kings is the person to whom the historians and later constitutional writers give the name of *justiciarius*, with or without the prefix *summus* or *capitalis*. The growth of his functions was gradual."<sup>48</sup>

Under William Rufus the functions of the confidential minister became largely extended; the office became a permanent one, and included the direction of the whole judicial and financial arrangements of the kingdom.

Mr. Stubbs thinks Ranulf Flambard "may be looked on as the first consolidator of the functions of the office."—"By whatever name the post was distinguished it became in Flambard's hands all important."<sup>49</sup>

"The chancellor, who, at a later period entered into many of the rights and dignities of the justiciar, appears in history very much earlier."—The office "seems to have been to a comparatively late period, generally, if not always, at least in England, held by an

<sup>46</sup> I Stubbs's Const. Hist., ch. 11, pp. 337, 338.

<sup>47</sup> Id., p. 343.

<sup>48</sup> Id., pp. 345, 346.

<sup>49</sup> I Stubbs's Const. Hist., ch. 11, pp. 347, 348.

ecclesiastic, who was a member of the royal household, and on a footing with the great dignitaries. The chancellor was the most dignified of the royal chaplains, if not the actual head of that body. The whole of the secretarial work of the household and court fell on the chancellor and chaplains; the keeping of the royal accounts under the treasurer and justiciar, the drawing up and sealing of the royal writs, and the conducting of the king's correspondence. The chancellor was, in a manner, the secretary of state for all departments."<sup>50</sup>

Mr. Stubbs speaks of the treasurer, the chamberlain and other great functionaries of the household and of the state; each dignitary of the household being a member of the Curia Regis<sup>51</sup> and Exchequer, and in that capacity exercising from time to time judicial functions.<sup>52</sup> After which Mr. Stubbs treats of the *witena-gemot* of

<sup>50</sup> Id., pp. 351, 352. There (pp. 352, 353) is this note: "The words of John of Salisbury, '*Hic est qui regno leges cancellat iniquas et mandata pii principis æqua facit*' are a curious anticipation of the history of the chancellor's equitable jurisdiction as developed at a later period. The play on the word is only a jesting one. The reference to equity is explained when it is remembered that the Curia Regis was, by its very nature, a court of remedial and equitable jurisdiction in the wider sense of the word equitable." From Text. Roffens., p. 171, Mr. Spence cites the Royal order '*Prohibeo ne piscatores piscant in Tamesia ante piscaturam de Rovecestra de Niverra et si ullerius invenientur piscantes, sint mihi foris facti.*' This order of '*Henricus Rex Anglorum*' is directed to '*Haimoni Dapifero et Hugoni de Bock*' for execution thereof. 1 Spence's Eq., p. 108, note (e). It does not appear necessary to regard it as an 'instance of an *injunctio*' in the sense in which a court of equity has been accustomed to use that word since the fourteenth century.

<sup>51</sup> 1 Const. Hist., ch. xi, p. 353 to 356. "The officers of the Exchequer are the great officers of the household; the justiciar who is the president, the chancellor,

the constable, two chamberlains, the marshal and the treasurer, with such other great and experienced counsellors as the king directs to attend for the public service, and who share with the others the title of barons of the Exchequer. Amongst these, if not identical with them, are the justices or ordinary judges of the Curia Regis, who appear to be called indiscriminately '*justitiiarii*' and '*barones scaccarii*.'" Id., p. 378.

<sup>52</sup> 1 Const. Hist., ch. 11, p. 353 to 356. "The treasurer, the chancellor, even the justiciar, pays a sum of money for his office, or even renders an annual rent or farm for it." Id., p. 355. It is stated that the chancellor "in A. D. 1130 owes £3,006. 13. 4. for the Great Seal; the office of treasurer was bought by Bishop Nigel for his son for £400. Inferior places on the legal staff are also sold." Id., p. 384. The "practice runs on to the thirteenth century, when so many of the dignities having become hereditary, and the feeling of the nation being strongly expressed in favour of reform, the king was compelled to choose his subordinate ministers with some reference to their capacity for business." Id., p. 355.

the kingdom, now subsisting under the title of the great court or council.

"Under the Conqueror this assembly retained very much of its earlier character: the bishops and abbots still attended in virtue of their official wisdom, and with them the great officers of state and the chief of the Norman baronage. It was, however, rather a court than an organized council."—"Except in the anomalous period of Stephen's reign, there are no records of any such discussions as might lead to divisions. In private, perhaps, the sovereign listened to advice, but so far as history goes, the counsellors who took part in formal deliberations must have been unanimous or subservient. An assembly of courtiers, holding their lands of the king, and brought together rather for pompous display than political business, may seem scarcely entitled to the name of a national council. Such as it was, however, this court of bishops, abbots, earls, barons and knights, was the council by whose advice and consent the kings condescended to act, or to declare that they acted."<sup>58</sup>

9. *Particularly of judicial proceedings in the king's presence during the Norman period. Report of the court held in 1088, on Bishop William of St. Carileph, cited to show the Curia Regis as it then was.*

Judicial proceedings in the king's presence are frequently mentioned.

"It was by a judicial sentence that Earls Waltheof and Roger were condemned; in a great session of the king's court the bishop of Durham was tried in 1088; in a council at Salisbury, in A. D. 1096, William of Eu had his trial by battle, and his cruel punishment; in the same council the king sentenced William of Alder to be hanged and the other conspirators to be imprisoned; in A. D. 1102, Henry I summoned Robert of Belesme before his court and alleged forty-five articles of treason against him; in A. D. 1130, Geoffrey de Clinton was accused of treason in the Easter court at Woodstock. In all

<sup>58</sup> Stubbs's Const. Hist., ch. 11, p. 356 to 358. "It would not now be contended that the assemblies brought together by the Conqueror, or Henry I, had the definite organization of the parliaments of Edward I, or even of the councils of Henry II. But that there were such gatherings of magnates, and that those gatherings, when they emerge from obscurity in the reign of Henry II, were assemblies of tenants-in-chief, is

clear on the face of history. The period was one of transition and growth in every way. No legislative act turned the witenagemot into a feudal council, and no legislative act turned the feudal council into a parliament." Id., p. 356, note; 5 Freem. Norm. Conquest, p. 272 to 283; 1 Green's Short Hist., ch. 2, § 6, p. 124; 1 Green's Hist. of Engl. Peop., book 2, ch. 2, pp. 145, 146 of vol. 1.



these, and numerous other cases which might be adduced, it is clearly the full national assembly, and not the mere justices, before whom the trial is conducted. The barons act as judges, the king, apparently, gives the sentence, although in this respect, also, he is open to advice. It was by the counsel of Hugh of Chester that William of Eu suffered mutilation. The mode of trial was probably the same as in the lower courts, the accusation by sworn witnesses, compurgation, ordeal and trial by battle."<sup>54</sup>

"Matters of civil jurisdiction were also brought before these assemblies, although the determination in such cases would fall to the lot of the more experienced lawyers of the Curia Regis or Exchequer."<sup>55</sup>

On a subsequent page, after stating the course of the Anglo-Saxon kings,<sup>56</sup> it is said:

"The Norman duke has his feudal court of vassals like every other feudal lord, and a tribunal of supreme judicature, which may or may not have been personally identical with the court of vassals. The royal judicature in England was, in the reigns of the Conqueror and William Rufus, exercised either by the king or justiciar in person on the great festivals, or by special commission in the shire-moot. The question then" (says Mr. Stubbs), "is this, Was the *curia regis* as developed under Henry I, the *curia ducis* of Normandy? or, was it the king himself, acting as judge with the counsel of his witan, or a portion of them? or, was it not rather a tribunal in a stage of growth, springing from a combination of the two older systems, and tending to become some thing very different from either?" In the opinion of Mr. Stubbs, "the report of the court held on Bishop William of S. Carileph, after the rebellion of 1088, supplies us with convincing proof that the last is the true account of the matter."<sup>57</sup> Mr. Stubbs

<sup>54</sup> 1 Stubbs's Const. Hist., ch. 11, pp. 371, 372.

<sup>55</sup> Id., p. 372. "A great council at Pedreda, in the Conqueror's reign, determined the suit between the churches of York and Worcester, and a similar quarrel between the bishops of Llandaff and St. David's came before the court more than once in the latter years of Henry I." Id., p. 372.

<sup>56</sup> "The Anglo-Saxon kings heard causes in person; the judgment of the king was the last resort of the litigant who had failed to obtain justice in the hundred and the shire. He had also a court in which the disputes of his immediate dependents were settled, the 'thening-manna-gemot,' the existence of

which is proved, but no more than its existence." 1 Stubbs's Const. Hist., ch. xi, p. 439; 5 Freem. Norm. Conq., 284 et seq., and appendix N. N., pp. 588, 589.

<sup>57</sup> Id., 440. "The bishop had acted traitorously, and the king's officers had seized his estates; he demanded restitution; the king insisted that he should purge himself of his treason. The bishop pleaded his right to be treated as a bishop, but offered to defend himself from the charge of having broken his oath of fealty. The parties met at Salisbury, where all the bishops, earls, barons and royal officers assembled. Lanfranc refused to listen to the bishop's plea, and he was appealed of treason by Hugh de Beaumont on the king's part. After

states the nature of the record, drawn up by a friend of the bishop, and thinks its details "sufficient to prove that the court in which the trial was held was the *witena-gemot* acting as a feudal court of peers."<sup>58</sup> In his view "the *curia regis* of Henry I was a regulated and modified form of that of William Rufus, as that of Henry II was an organized development of that of Henry I."<sup>59</sup> "The age of routine, dependent on the will of a despot, passes by almost perceptible stages into the age of law."<sup>60</sup>

10. *The National Council viewed as a full session of the Curia Regis; or the Curia Regis as a committee of the Council. Who presided in the king's absence; and who were the ordinary members of the court. The chancellor sat in it as a member, although the cause might not belong specially to the chancery. Also of the Exchequer. The Record of its business preserved in great rolls, one of which was kept by the chancellor, and called the roll of the chancery. In these rolls and Domesday book is a valuable store of information.*

"The great gatherings of the national council may be regarded as full sessions of the *Curia Regis*; or the *Curia Regis* as a perpetual committee of the national council."—"The courts, in the king's absence, were presided over by the chief or great justiciar, acting "*ex precepto regis*" or '*vice sua*,' '*in meo loco*,' as the Conqueror expressed it. The other persons who bear the title of justiciar, the ordinary members, as they may be called of the court, were the same as those of the Exchequer; the same persons who acted as barons in the latter acted as justices in the former."<sup>61</sup>—"The great officers of the household seem to have acted in the business of the *Curia Regis*, simply, however, as justices;"—when we find the chancellor or chamberlain sitting in judgment, we are not to suppose that the cause on which he decides is one belonging specially to the chancery or the chamber; he is simply a member of the king's judicial court."

much deliberation, every stage of which is recorded, the bishop still insisting on his right, Lanfranc declares that he must first answer the king's demand: 'We are not judging you in the matter of your bishopric but of your fee, and so we judged the bishop of Bayeux, before the king's father, concerning his fee; nor did the king in that plea call him bishop, but brother and earl. The bishop struggles against this and appeals to Rome. The court then deliberates on the sentence, which is finally pronounced by Hugh de Beaumont, in the name of the

king's court and the barons: as the bishop will not answer the charge brought against him, he forfeits his fee." *Id.*, p. 440.

<sup>58</sup> *Id.*, pp. 440, 441.

<sup>59</sup> He regards the trial of Henry of Essex, early in the reign of Henry II, and that of Robert of Belesme, in the reign of Henry I, as links in a series which proves the fundamental identity of the earliest and latest forms. *Id.*, 441.

<sup>60</sup> *Id.*, 444.

<sup>61</sup> *Stubb's Const. Hist.*, ch. 11, pp. 387, 388.

The Exchequer of the Norman kings was the court in which the whole financial business of the country was transacted."<sup>62</sup>—"Twice a year, at Easter and at Michaelmas, full sessions were held in the palace at Westminster."

"The record of the business was preserved in three great rolls; one kept by the treasurer, another by the chancellor, and a third by an officer nominated by the king, who registered the matters of legal and special importance. The rolls of the treasurer and chancellor were duplicates; that of the former was called from its shape the great roll of the pipe, and that of the latter the roll of the chancery."<sup>63</sup>

<sup>62</sup> *Id.*, p. 377.

<sup>63</sup> *Id.*, 379. "These documents are mostly still in existence." The Pipe Rolls are complete from the second year of Henry II, and the Chancellor's Rolls nearly so. Of the preceding period only

one roll, that of the thirty first year of Henry I, is preserved, and this, with Domesday book, is the most valuable store of information which exists for the administrative history of the age." *Id.*

## TITLE III.

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### INSTITUTIONS OF ENGLAND IN THE REIGNS OF HENRY II, AND HIS SONS.

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CHAP. XI.—Institutions in the Reign of Henry II	—1154 to 1189.
XII.—Institutions in the Reign of Richard I, or Cœur de Lion	—1189 to 1199.
XIII.—Institutions in the Reign of John	—1199 to 1216.
XIV.—Review of the whole period	—1154 to 1216.

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## CHAPTER XI.

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### INSTITUTIONS IN THE REIGN OF HENRY II—1154 TO 1189.

1. *Of Henry himself; his election and coronation Dec. 19, 1154; his charter of liberties; expulsion of mercenaries; and demolition of fortified houses.*

"The Norman period closes with the accession of Henry II, whose statesmanlike activity, whose power of combining and adapting that which was useful in the old systems of government with that which was desirable and necessary under the new, gives" (Mr. Stubbs thinks) "to the policy which he initiated in England, almost the character of a new creation."<sup>1</sup>

"He was a young man of keen, bright intellect, patient, laborious, methodical; ambitious, within certain well defined limits, tenacious of power, ingenious even to minuteness in expedients, prompt and energetic in execution; at once unscrupulous and cautious."<sup>2</sup>

<sup>1</sup> 1 Stubbs's Const. Hist., ch. 10, p. 336.

<sup>2</sup> Id., ch. 12, p. 447.

"He had, in his wife and mother,<sup>3</sup> two counsellors of ability and experience, but his own genius for government must have been innate; and next to his genius the most important element in the creation of his characteristic policy must be looked for in his choice of advisers." "There must have been in Henry himself some gift that called forth or detected the ability of his servants."

"Henry landed in England on the 8th of December."—"After receiving the fealty of the chief barons at Winchester," he "hastened to London, where he was elected and crowned on the 19th of December, and issued a charter of liberties as brief and comprehensive as that of Stephen had been. He grants and confirms all the gifts, liberties and customs that his grandfather had granted, promises the abolition of all evil customs that he had abolished, and enjoins that the church, his earls, barons and all his men, shall have and hold, freely and quietly, well, in peace and wholly, of him and his heirs, to them and their heirs, all the liberties and free customs that King Henry I had granted and secured by his charter. The reference to the charter of Henry is as marked as the omission of all mention of Stephen."<sup>4</sup>

"On Christmas day the king held his court at Bermondsey,<sup>5</sup> and having debated with the barons on the measures necessary to the state of the kingdom, directed the expulsion of the mercenaries and the demolition of the adulterine castles."<sup>6</sup>—"The official dignity of the court was replaced on its old footing."<sup>7</sup>

2. *Of Theobald, archbishop of Canterbury. He recommended Thomas Becket; and Becket was appointed chancellor. His qualifications for the office; and performance of its duties.*

Theobald, archbishop of Canterbury, who suffered banishment in Matilda's cause, and negotiated the treaty between Stephen and Henry, was at the helm of state in the peaceful interregnum between

<sup>3</sup> Although his parents were ill matched, yet some part of his education is put to his mother's credit. "In spite of her imperious behaviour and her want of self-control, Matilda was a woman of considerable ability; in her old age she was a safe and sagacious counsellor." *Id.*, pp. 447, 448.

<sup>4</sup> In 5 *Freem. Norm. Conquest*, p. 221, *edi.* 1876, it is stated that Henry "was anointed King at Westminster, December 20, 1154." The language of the text is according to 1 *Stubbs's Const. Hist.*, ch. 12, pp. 449, 450. The charter is in 1 *Statutes of the Realm*, p. 4 of *edi.* 1810;

*Stubbs's Select Charters*, pp. 128, 129. Specimens of Charters for boroughs are in *Id.*, p. 157 to 160.

<sup>5</sup> In Surrey county. Bermondsey is about two miles from Westminster abbey, and one mile from the Bank of England; it stretches along the banks of the Thames from Southwark to Deptford and Rother-hoithoe.

<sup>6</sup> 1 *Stubbs's Const. Hist.*, ch. 12, p. 450, "William of Ypres consequently departed with his Fleming soldiers; and the demolition of the fortified houses was speedily begun." *Ibid.*

<sup>7</sup> *Id.*, p. 450.

Stephen's death and Henry's accession, and retained the first place in the king's council, until age and infirmity admonished him to retire.<sup>8</sup> Theobald recommended to Henry, his arch-deacon, Thomas Becket.<sup>9</sup> Becket "was endowed with many brilliant and serviceable gifts. He was an able man of business, versatile, politic," and liberal; "well skilled in the laws of England, and not deficient in the accomplishments of either clerk or knight."<sup>10</sup> He was appointed chancellor, and made preceptor of the young prince.<sup>11</sup> Writing of his chancellorship, Lord Campbell says: "All the functions of the office he is allowed to have fulfilled most satisfactorily; and the measures which he recommended as minister were just and prudent."<sup>12</sup>

"We know that Becket sat as a member of the supreme court, or *Aula Regis*; that he sealed all the king's grants with the Great Seal; that he had the care of the royal chapel; and that he acted as secretary to the king in domestic affairs and in all foreign negotiations."<sup>13</sup> "As the king's chancellor, he not only became the most trusted counsellor of his sovereign, but his vigorous administration of his office, marks one of the stages in the growth of the dignity of that office." Dr. Freeman remarks, that "Thomas, at the side of the second Henry,

<sup>8</sup> 2 Lingard's Engl., ch. 5, p. 197; 1 Stubbs's Const. Hist., ch. 12, pp. 449, 450. In a note on p. 450 Mr. Stubbs refers to Gervase, c. 1377, for the statement that "Thomas was made chancellor at the accession."

<sup>9</sup> Gilbert Becket filled the office of sheriff or portgrave of London. His son Thomas, born in that city in 1118 or 1119, was in childhood under the care of the canons of Merton, and afterwards continued his studies in the schools of the Metropolis, of Oxford and of Paris. When his father died he was admitted into Theobald's family, and with his permission left England to improve himself in the knowledge of the civil and canon law. He attended the lectures of Gratian at Bologna (mentioned in ch. 10, § 4, p. 172), and of another celebrated professor at Auxerre. After his return he obtained preferment in the churches of Lincoln and St.

Paul's; was collated to the provost-ship of Beverley; and on the elevation of Roger de Pont L'Eveque to the see of York, succeeded him in the arch-deaconry of Canterbury. Becket became the confidential adviser of the primate; and as his representative twice visited the papal court. 2 Biogr. Britan., pp. 100, 101; 2 Lingard's Engl., ch. 5, pp. 197, 198; 1 Turner's Engl., ch. 8 p. 224, and p. 243; 1 Mackintosh's Engl., pp. 133, 134, of Phila. edi., 1830; Foss's Biogr. Jurid.; Green's Hist. of Engl. Peop., book 2, ch. 2, pp. 158, 159, of vol. 1.

<sup>10</sup> 1 Stubbs's Const. Hist., ch. 12, pp. 460, 461.

<sup>11</sup> 2 Biogr. Britan., p. 101 of edi. 1780; 2 Lingard's Engl., ch. 5, p. 198; Green's Hist. of Engl. Peop., book 2, ch. 3, p. 163 of vol. 1.

<sup>12</sup> 1 Lives of Chancellors, p. 97, of 2d edi., p. 96 of Boston edi., 1874.

<sup>13</sup> *Id.*, p. 66.

seemed to hold the same place which Roger of Salisbury had held at the side of the first."<sup>14</sup>

3. *Of the justiciars Robert de Beaumont, earl of Leicester, and Richard de Luci. Provision for provincial as well as for central judicature. Whether in 1156 the chancellor was with the king on the continent; or remained in England acting as judge.*

It is a question whether the person first raised (in this reign) to the office of chief justiciary was *Robert de Beaumont*,<sup>15</sup> earl of Leicester. Mr. Foss states that "on Stephen's death, the earl was among the principal counsellors of his successor; and being as eminent for the qualifications of his mind and his knowledge of the law as he had shewn himself in state policy and civil affairs, he was immediately raised by Henry to the office of chief justiciary or president of the exchequer, which he retained during his life." But on another page, Mr. Foss, in speaking of *Richard de Luci*,<sup>16</sup> says: "Under Henry II there is

<sup>14</sup> 5 Freem. Norm. Conq., ch. 26, p. 441 of edi. 1876.

<sup>15</sup> He succeeded, as the elder of two twin sons, his father of the same name, who, as earl of Mellent, in Normandy, was one of the principal ministers of Henry I, and acquired the reputation of being the first statesman in Europe. He was allied to the Conqueror's family, and accompanying him as a young man in his expedition to England, distinguished himself by making the first onset in the battle of Hastings, and was rewarded with the grant of above ninety lordships in the counties of Warwick, Leicester, Wilts, Northampton and Gloucester. Henry I created him earl of Leicester; and on his death, in 1118, the lands in England, with the earldom, devolved on this Robert, who was surnamed Bossu. He supported king Stephen in the early part of his reign, and obtained a grant of the castle, town and county of Hereford, but on the arrival of Henry, duke of Normandy, declared for and assisted

him. He was a witness to the agreement, which terminated the warfare between him and Stephen. Biogr. Jurid.

<sup>16</sup> His ancestors held lands in Kent, Norfolk and Suffolk, for which they performed the service of castle-guard at Dover. Henry I granted to him the lordship of Disce, now Diss, in Norfolk. Under King Stephen he was entrusted with the government of Falaise, in Normandy, which he defended against the attacks of Geoffrey, earl of Anjou, the husband of Matilda. In the contest between her and King Stephen he supported the latter; and so high did he stand in the estimation of the contending parties, that on the agreement between Stephen and Henry, in 1153, the Tower of London and the castle of Windsor were both put into his hands by the desire of the whole clergy; he swearing to deliver them up to Henry on the death of Stephen, and giving his son as a hostage for his performance of the trust. Madox (i, 33.) quotes a writ which Mr. Foss re-

full evidence that he was placed in the high office of chief justiciary, though some doubt exists as to the precise period of his appointment. At a very early period *Robert de Beaumont*, earl of Leicester, and he, held the office jointly, and their separate precepts occurring on the rolls of the 2d, 3d and 4th years of the reign, show that each had high power."<sup>17</sup> As the charter of liberties first mentioned (in this chapter) is attested by *Richard de Lucy*, Mr. *Stubbs* supposes that "he was then probably in the office of justiciar."<sup>18</sup>

William of Newburgh mentions among the king's very first acts the careful provision made for provincial as well as for central judicature.<sup>19</sup> It is quite certain that circuits for fiscal and judicial purposes continued under Henry II.<sup>20</sup> In the year 1156 Henry was on the continent, and Mr. *Stubbs* says (what perhaps is doubtful)<sup>21</sup> that he was *accompanied by Becket*, who had already become his most intimate friend and most influential adviser; England was left under the management of the justiciars. After mentioning that the year "furnishes us with the first of an unbroken series of Exchequer Rolls;" and that "the Pipe roll of the second year of Henry II exhibits the accounts for the year ending at Michaelmas, 1156,"<sup>22</sup> Mr. *Stubbs* makes the following statement:

"A general visitation of the country had not been yet attempted,

gards as proving that Richard de Lucy was in the reign of Stephen "a justicier, a term which, in those days, was almost synonymous with that of baron; as when the king covenanted with Milo of Gloucester '*sicut justiciario et barone meo*.' In this instance," Mr. Foss observes "the word is used as a mere designation, and the writ is addressed to him not as justicier or baron, but simply as sheriff of Essex, to lands in which county it has reference." Biogr. Jurid.

<sup>17</sup> Mr. Foss adds, "He accompanied the king, in 1161, into Normandy; the earl of Leicester being left in England to direct the government. They appear to have acted together till the 13th year of

the reign, when the earl of Leicester died." Id.

<sup>18</sup> I *Stubbs's Const. Hist.*, ch. 12, p. 450.

<sup>19</sup> I *Stubbs's Const. Hist.*, ch. 12, p. 459; citing W. Newb. ii, c. 1.

<sup>20</sup> Mr. *Stubbs* mentions, early in this reign, "the appointment of justices who visited the forests at the time that the justices itinerant 'went the counties' or 'circuits.' Select Charters, p. 149; I *Stubbs's Const. Hist.*, ch. 13, p. 604.

<sup>21</sup> It may be that Becket was not in France with Henry in 1156; he was no doubt there with him in a subsequent year.

<sup>22</sup> Id., ch. 12, p. 454.



but the constable Henry of Essex,<sup>23</sup> had heard pleas in eight of the southern counties, in two of them, Essex and Kent, *in company with the chancellor, who, for the first time, appears in the character of a judge.*<sup>24</sup>

4. *Of Nicholas de Sigillo as Clericus or Magister Scriptorii. Also of the King's Chamberlains.*

Under Henry II the official position of *Nicholas de Sigillo* was like that held under Henry I by *Robert de Sigillo*, afterwards bishop of London; as to which see ch. 8, § 4, p. 155. In 19 H. II, 1173, 'Nicholas de Sigillo et Ricardus Thesaurarius' sat the assize on the king's demesnes in Oxfordshire; and as his name is placed before the king's treasurer, it is presumed he held a high rank. In the roll of 1174, there appear assizes set by Nicholas, the arch-deacon, '*et socios suos*,' in Buckinghamshire and Bedfordshire.<sup>25</sup>

Each of the king's chamberlains had a seal. In the king's court (sitting as barons or justices) were several chamberlains;<sup>26</sup> the head

<sup>23</sup> Henry de Essex, whose grandfather Swene, at the time of the general survey, was lord of Rachley, in Essex, and of no less than 54 other lordships in that county, besides others in Suffolk and Huntingdonshire, was the inheritor of this property after the death of Robert, his father. He was in great favour with Henry II, and held the high office of constable. His pleas as a justice itinerant, in many counties, are recorded in the rolls of that king from 1156 to 1158. (Pipe Rolls 31, 78, &c.) He was likewise sheriff or fermer of the counties of Bedford and Buckingham. Foss's Biogr. Jurid.

<sup>24</sup> Stubbs's Const. Hist., ch. 12, p. 454. Mr. Stubbs says: "We learn from the lives of St. Thomas that the chancellor himself was constantly employed in hearing causes." Id. p. 459; citing Roger of Pontigny, Vita St. Thom. (ed. Giles) i, 102. See also Stubbs, ch. xiii, pp. 598, 599.

<sup>25</sup> Mr. Foss considers that "they are

clearly assizes made of a former year, as the new assize for that year is made by other justices." Observing that 'Le Neve says that *Nicholas de Sigillo* was arch-deacon of Huntingdon as early as 1155,' Mr. Foss adds: "It appears, therefore, by the first of these entries that it was not always the custom to designate the clerical dignity." Id.

<sup>26</sup> *William Malduit* (Maledoctus) who succeeded to the office of chamberlain on the death of his elder brother, Robert, about 31 Hen. I, is mentioned in two instances (11 and 30 Hen. II, 1165 and 1184) as acting judicially; being present among those sitting in the Exchequer, whose charters or agreements relative to land were executed or acknowledged there. He held the sheriffalty of Rutland from 26 Hen. II, till the end of the reign; and his name is recorded as chamberlain up to 7 Ric. I (1195), soon after which he probably died. Foss's Biogr. Jurid.

of whom was one who was called *Magistra Cameraria*, and was an hereditary judge. The chamberlains sometimes acted as justices itinerant.<sup>27</sup> This appears also as to other officers.<sup>28</sup>

5. *Of the king's return in 1157; and his employment in 'legal business.'* Of his subsequent return to France, accompanied by the chancellor. From 1158 to 1163 England was administered by the justices. On the death of Archbishop Theobald the king resolved to advance Becket; in 1162 he was elected and consecrated archbishop; and resigned the chancellorship. Of his zeal in his new position.

"Henry returned to England on the 7th of April, 1157, and immediately" was "full of work," part of which was 'legal business.' "This year is not marked as one of great judicial activity."<sup>29</sup> In August, 1158, the king again went to France. In 1159, when he undertook the subjugation of Toulouse, he was accompanied by Chancellor Becket and the whole court. Henry was at a distance from England until January, 1163. "During this long period" (1158 to 1163) "the country was administered by the justices; the queen, or the young Henry, occasionally presiding in the court or at the councils."<sup>30</sup>

<sup>27</sup> *Henry Fitz-Gerold*, as one of the king's chamberlains, had a seat in the Curia Regis, and is one of the three *justicia regis* directing an exchange of lands at Canterbury between the king and one Atheliza. In 16 and 17 Hen. II (1170-1) he was a justice itinerant in Kent. Id. *Richard Rufus* (or Ruffus) was one of the chamberlains in 14 Hen. II, and held the office till his death, about 5 John. Id.

<sup>28</sup> *Wimer*, called 'the chaplain,' no doubt as filling that place in the king's court, appears as a justice itinerant in 1173, when he and three others assessed the tallage on the king's demesnes in Essex and Hertfordshire. Id.

*William Rufus* (or *Ruffus*) acted as a justice itinerant from 19 to 26 Hen. II (1173-1180), and was one of the justiciars present before whom fines were

levied in 1182-1189, in the latter of which years he is styled *dapifer regis*; an office supposed to be the same as seneschal or steward, and of which there may have been several at one time, perhaps holding different grades, with one above them all. *William Fitz-Aldelm* (or Aldelin) who, in 11 Hen. II, is called one of the king's marshals, was, in 1177, and probably before, one of the *dapifers*. Id.

<sup>29</sup> I Stubbs's Const. Hist., ch. 12, p. 454, 455. At St. Edmunds, he "wore his crown on Whitsunday, and held a great court"—At Northampton on the 19th of July; having "*done some legal business*," he proceeded into the west. Id., p. 455.

<sup>30</sup> Id., pp. 456, 457, 458. "The rolls of account shew that the business of justice and taxation went on without difficulties." Id.

In the "campaign with King Henry, in his expedition into Toulouse, A. D. 1159," Becket had "in his own pay twelve hundred horse, besides a retinue of seven hundred knights or gentlemen;" he was "forward in action, and commanding at the sieges of several strong places. In 1160 he was sent by the king to Paris, to treat of a marriage between Prince Henry, then but seven years old, and the Princess Margaret, the king of France's daughter, no more than three; in which negotiation Becket succeeded, and returned with the young princess to England. He had not been chancellor much above four years, when Archbishop Theobald died. The king, who was then in Normandy, presently cast his eyes upon the chancellor, and resolving to advance him to the see of Canterbury, sent over his agents to England."<sup>31</sup>

In adopting this resolution the king may have made a great mistake;<sup>32</sup> but the resolution was carried out. In 1162, in May, Becket was, in the presence of the justiciar, elected by the bishops of the province to the see of Canterbury; he was consecrated June 3; and before the close of the year he resigned the chancellorship.<sup>33</sup>

Now the primate and ex-chancellor "became the champion of the clergy, the agent or patron of the pope, whom he probably had persuaded Henry to recognize; the asserter of the rights of his church and of his own constitutional position as first independent adviser of the crown."<sup>34</sup>

#### 6. *What was done or left undone as to the chancellorship after Becket's resignation of it.*

Although *Becket* had in 1162 resigned the office of chancellor, yet it remained unfilled during his life, John of Oxford acting as proto-

<sup>31</sup> 2 Biogr. Britan, p. 101 of ed. 1780, Archbishop Theobald died in April 1161. Foss's Biogr. Jurid.

<sup>32</sup> Id.; 5 Freem. Norm. Conq., ch. 26, p. 442 of ed. 1876. Freeman says of Thomas, "*He was a man who strove to carry out to the utmost the highest ideal of any position in which he found himself.*" Ibid.

<sup>33</sup> 1 Stubbs's Const. Hist., ch. 12, p. 458; 2 Lingard's Engl., ch. 5, p. 205; Foss's Biogr. Jurid. Yet with the education of Prince Henry, who had for several years been under Becket's care,

the king continued to entrust Becket; the Prince remained with Becket till the following year, when he proceeded to the council of Tours. *Id.*

<sup>34</sup> 1 Stubbs's Const. Hist., ch. 12, p. 461. "With the example of Anselm before his eyes, he would be as Anselm; once an Archbishop, he would do whatever a saintly Archbishop ought to do. No two men could be more unlike in their nature than Anselm and Thomas, and the position of the two was, in every respect, unlike. An artificial and conscious striving after saintship was some-

notary, vice-chancellor, or keeper of the seal.<sup>35</sup> After Becket's death, it does not appear who, if any one, was appointed to the office before *Ralph de Warneville*.<sup>36</sup> He held the seals till the appointment of *Geoffrey Plantagenet*,<sup>37</sup> who is said to have acted in the office, notwithstanding his youth, with extraordinary equity and discretion.<sup>38</sup>

7. *Of the king's return in 1163; and his application to business. As to the action of the curia regis.*

After five years' absence, the king returned to England in January, 1163, and applied himself to public business even more zealously than before. The *curia regis* appears now (as it was under Henry I), a tribunal of exceptional resort to which appeals, although increasing in number, were still comparatively rare, and the action of which is scarcely distinguishable from that of the national council. The king himself took a leading part in the business, much of which was done

thing very unlike the natural and inevitable saintship of Anselm. The career of Thomas was forced and unnatural; every act was overdone, and almost theatrical; but no man can doubt that *he did* throughout *what he deemed to be his duty*; in truth he did as a man of his temper put in his place could hardly fail to do." 5 Freem. Norm. Conquest, p. 443,

<sup>35</sup> 1 Stubbs's Const. Hist., ch. 12, p. 468; also ch. 11, p. 352. Mr. Foss observes that "John is inserted as a chancellor under Henry II by Philpot and Spelman, and their followers, Hardy and Lord Campbell, but without sufficient authority." Biogr. Jurid. Lord Campbell's language as to the chancellorship in this interval, begins thus: "We find the names of several who are *said* to have held it. First, 'Joanes Cancellarius' occurs; but of this John we know not the surname, nor what other dignity he ever attained." 1 Lives of the Chancellors, ch. 4, p. 101 of 2d ed. (1846); p. 100 of Boston ed. 1874.

<sup>36</sup> Sacrist. of Rouen and Treasurer of York. Biogr. Jurid. Mr. Stubbs men-

tions that he lived in Normandy, and discharged his duties by means of a vice-chancellor, *Walter of Coutances*. 1 Const. Hist., ch. 12, p. 482.

<sup>37</sup> The younger of the two sons of Henry II by Fair Rosamond, one of the daughters of Walter de Clifford, a baron of Herefordshire. Geoffrey, who had been arch-deacon of Lincoln, was elected to the bishopric in 1173; and in 1174 aided his father against that father's legitimate sons, for which the king greatly commended him. In 1181, when the pope insisted that unless he should take priest's orders and be consecrated he should resign his bishopric, he, in his letter of resignation, calls himself chancellor, to which office the king had previously appointed him. This office he continued to hold during the remainder of his father's reign. Foss's Biogr. Jurid.

<sup>38</sup> The affection of his father, who had sent him to Tours, to attend the schools there, appears in charters and in his will, wherein he is called 'my son and chancellor.' Id.

in his presence.<sup>39</sup> There also appears a show of judicial activity among the subordinate members of the household, the court and the exchequer.<sup>40</sup>

8. *Of the contest between the king and Becket; 'the Constitutions of Clarendon' in 1164; the council at Northampton in October of that year; Becket's going to France; and his struggle there for six years.*

It was at Woodstock, in July 1163, that the king's first great trouble, the quarrel with Becket, began.<sup>41</sup> Mr. Stubbs speaks of the first dispute as one of which the account given by contemporary writers is obscure.<sup>42</sup> The action of a justice itinerant at Bedford in this year (1163)<sup>43</sup> is particularly mentioned by Dr. Lingard,<sup>44</sup> and seems connected with what occurred a few months afterwards in the council of Westminster.<sup>45</sup>

<sup>39</sup> 1 Stubbs's Const. Hist., ch. 12, p. 460; and ch. 13, pp. 598, 599. Early in March he is found in council hearing the wearisome cause of Richard de Anesty, at London; at the end of the month, at Windsor, he presided at the trial in which Henry of Essex, the constable, was appealed for treason by Robert de Montfort, and having been defeated in trial by battle, forfeited his great inheritance. After a hurried expedition into Wales, he was on the 1st of July at Woodstock, where the king of Scots and the princes and lords of Wales did homage to the heir. *Id.*, p. 460.

<sup>40</sup> *Id.*, ch. 13, p. 598. In 9 Hen. II, William Fitz-John held pleas in the county of Hereford. Foss's Biogr. Jurid.

<sup>41</sup> 1 Turner's Engl., ch. 8, p. 245; 1 Stubbs's Const. Hist., ch. 12, pp. 460, 466; citing R. Diceto, c. 536.

<sup>42</sup> 1 Stubbs, ch. 12, p. 462; citing Grim. Vita St. Thom. I, 21, 22; Roger of Pontigny I, 113; Garnier, p. 65; and Will. Cantuar. II, 85.

<sup>43</sup> The judge was Simon Fitz-Peter, 1 Stubbs's Const. Hist., ch. 13, p. 604.

note 1. Mr. Foss, after mentioning that he acted for four years, commencing 2 Hen. II, as deputy to Henry de Essex, sheriff of the counties of Buckingham and Bedford, says "it was probably at a later period that he was a justice itinerant in the latter county, when his name is mentioned in connection with the case of a certain canon of Bedford, named *Philip de Brois*, who having been convicted of manslaughter before his bishop, was merely condemned to make pecuniary compensation to the relatives of the deceased. In the open court at Dunstable, the judge, alluding to the case, called him a murderer; whereupon a violent altercation ensued, and the priest's irritation drawing from him expressions of insult and contempt, the king ordered him to be indicted for this new offence." Biogr. Jurid.

<sup>44</sup> 2 Lingard's Engl., ch. 5, p. 213 *et seq.*

<sup>45</sup> 1 State Tr., 8 to 11; 1 Mackintosh's Engl., pp. 135, 136 of Phila. edi. 1830; 1 Stubbs's Const. Hist., ch. 12, p. 463.

"Ever since the Conqueror had divided the temporal and spiritual courts of justice, the treatment of criminal clerks had been a matter of difficulty; the lay tribunals were prevented by the ecclesiastical from enforcing justice, and the ecclesiastical ones were able only to inflict spiritual penalties. The reasonable compromise which had been propounded by the Conqueror himself, in the injunction that the lay officials should enforce the judgments of the bishops, had been rendered inefficacious by the jealousies of the two estates; and the result was that in many cases grossly criminal acts of clerks escaped unpunished and gross criminals eluded the penalty of their crimes by declaring themselves clerks."<sup>46</sup>

Mr. Turner states that "a clergyman in Worcester had debauched the daughter of a respectable man, and for her sake had murdered the father;" and the king demanded that he should be brought before his tribunal to answer for the horrible act."<sup>47</sup>

According to Mr. Stubbs, the king proposed "that clerical criminals should be tried in the ordinary courts of the country; if they were convicted or confessed, they should be degraded by the bishops and delivered over to the executioners for condign punishment. *Becket* resisted;" in his view "it was sufficient that the criminal should be degraded; if he offended again, he offended as a layman, and the king might take him; but the first punishment was sufficient for the first offence."<sup>48</sup> The king further complaining of the exactions of the ecclesiastical courts, "proposed to the assembled bishops that they should promise to abide by the customs which regulated those courts and rights of the clergy generally, as they had been allowed in the days of his grandfather." All of them save one (*Hilary*, bishop of Winchester,) in answering that they were willing to do so, added (at *Becket's* suggestion) the words 'saving their order;' on hearing which reservation, the king left the assembly in anger."<sup>49</sup>

The king called together at Clarendon, in January, 1164, the whole

<sup>46</sup> 1 Stubbs's Const. Hist., ch. 12, p. 463.

<sup>47</sup> 1 Turner's Engl., ch. 8, p. 246. The clergyman alluded to by Mr. Turner may perhaps have been *Philip de Brois*, whom *Simon Fitz-Peter* called a murderer, as mentioned in note 43.

<sup>48</sup> 1 Stubbs's Const. Hist., ch. 12, pp. 463, 464.

<sup>49</sup> And deprived the archbishop of the custody of the castles of Eyre and Berkhamstead. Id., p. 464; Foss's Biogr. Jurid.

body of the bishops and barons.<sup>50</sup> Proceedings of this assembly are mentioned by Lord Coke<sup>51</sup> and others.<sup>52</sup>

"The archbishop was bidden to accept the customs in use under Henry I; and again he declined doing anything unconditionally. Then the king ordered that they should be reduced to writing, having been first ascertained by recognition. They, according to the formal record, were the archbishops, bishops, earls, barons and most noble and ancient men of the kingdom; according to the archbishop, *Richard de Lucy*, the justiciar; and *Jocelin de Bailleul*, a French lawyer, of whom little is known, were the real authors of the document, which was the result of the enquiry, and has become famous under the name of the 'Constitutions of Clarendon.'"<sup>53</sup>

These constitutions are sixteen in number, and purport to be a codification of the usages of Henry I, on the disputed points."<sup>54</sup>

"The existence of the *curia regis*, as a tribunal of regular resort, the right of the bishops to sit with the other barons in the curia until a question of blood occurs, the use of juries of twelve men of the vicinity, for criminal causes and for recognition of claims to land, all these are stated in such a way as to show that the jurisprudence of which they were a part was known to the country at large. Accordingly, the institution of the Great Assize—the edict by which the king empowered the litigant who wished to avoid the trial by battle, to obtain a recognition of his right by inquest of jury—must be supposed to have been issued at an earlier period of the reign; and the use of the jury of accusation, which is mentioned in the laws of Ethelred, but only indistinctly traceable later, must have been revived before the year 1164."<sup>55</sup>

So regarding them, Mr. *Stubbs* considers these constitutions 'as really a part of a great scheme of administrative reform by which the debatable ground between the spiritual and temporal powers

<sup>50</sup> 1 *Stubbs's Const. Hist.*, ch. 12, p. 464.

<sup>51</sup> Preface to 6 Rep., pp. xii and xiii.

<sup>52</sup> 1 *Mackintosh's Engl.*, p. 136 to 139 of Phila. ed. 1830; *Stubbs's Select Charters*, p. 129 to 134 of ed. 1870; 1 *Stubbs's Const. Hist.*, ch. 12, p. 464 to 466.

<sup>53</sup> 1 *Stubbs's Const. Hist.*, ch. 12, p. 464.

<sup>54</sup> *Id.*, p. 464. Mr. *Stubbs* says: "The references made" in these constitutions "to the system of recognitions and juries of presentment, seem to justify us in in-

ferred that whether or no these customs are rightly described as belonging to the reign of Henry I, there is the utmost probability that they had been recognized as part of the ordinary course of law since the beginning of the reign of Henry II, although not in the complete form given in his later acts." *Id.*, p. 459.

<sup>55</sup> 1 *Stubbs's Const. Hist.*, ch. 12, p. 465.

can be brought within the reach of common justice, and the lawlessness arising from professional jealousies abolished.”<sup>56</sup>

Of the king's proceedings against Becket before and in the council at Northampton in October, 1164, there is a narrative in 1 Brady's History of England, 383, from which is taken the account in 1 Howell's St. Tr., p. 2 to 12. There it appears that John Marshall (or the Marshall) having in the archbishop's court a suit wherein was demanded a manor or farm, came with the king's writ into that court to remove the suit; and to prove the defect of the archbishop's court (drew from under his coat and) “swore upon a Tropag, or book of old songs,” instead of swearing upon the Gospels. Afterwards John procured the king's writ requiring the archbishop to answer him in the king's court. The archbishop sent to the king knights to make his excuse, that his not appearing in person was because of sickness, and also sent letters as to the book on which John had sworn. At another day, after a new writ to cite the archbishop, he was accused of *treason*, on no other or better ground than that “he was cited by the king in the cause of John and neither came nor made a sufficient excuse;” for this the court “condemned him to be in the king's mercy for all his movable goods.”<sup>57</sup>

Afterwards the archbishop was prosecuted on the same day for a sum of £300, and on the third day for other sums; and also the profits of the archbishopric and other bishoprics and abbeys that were void during his chancellorship.<sup>58</sup> The archbishop “declined the suit, because he was not cited to yield an account upon any other cause than that of John; neither was he bound to make answer or

<sup>56</sup> Id., pp. 465, 466.

<sup>57</sup> The bishops, in a subsequent conference, “told the king that the archbishop, when he advised with them, told them they had used him very ill, and, with the barons, treated him as an enemy, and not judged him justly, but after an unheard of manner, because for one absence (*pro una absentia, quam supersisam dicunt*), which they call a delay or default, and was not to be judged a contu-

macy, they ought not to have condemned him in such a pecuniary mulct as that he should forfeit all his movable goods to the king, or they should be in his mercy. The bishops also knew that he had appealed to the pope against this sentence, and, by the authority of the pope, forbidden them for the future to judge him in any secular accusation.” 1 St. Tr. 5.

<sup>58</sup> Id., pp. 4, 5; 1 Turner's Engl., ch. 8, p. 254.



hear judgment in any other.”<sup>59</sup> He went his way, and after being amongst friends in several monasteries, embarked, on board a ship at Graveling.<sup>60</sup> Getting to France, he there conducted a struggle for six years.<sup>61</sup>

9. *Of justices in 1164 and 1165; the assize of Clarendon in 1166; the growing work of the curia regis; the assize carried out in 1166-7. Of the survey in 1167; and the circuits in 1168, 1169 and afterwards. Among the barons and justices were William Basset and Thomas Basset.*

*Guy Rufus* was one of the justices sitting in the Exchequer in 11 Hen. II; and from 14 to 23 Hen. II, was actively employed as a justice itinerant, his pleas being recorded in at least sixteen counties.<sup>62</sup> *Simon Fitz-Peter* (mentioned on p. 193) is the first of four ‘*assidentes justiciæ regis*,’ before whom a contract was executed at the Exchequer in 11 Hen. II (1165).<sup>63</sup> Nigel, bishop of Ely, who at an earlier period is styled ‘*Baro de Scaccario*’ is the first of *assidentibus justiciis regis* before whom a contract between the abbots of St. Alban’s and Westminster was executed in the same year.<sup>64</sup>

In 1166 the provincial administration of justice is remodelled by the assize of Clarendon,<sup>65</sup> which Mr. Stubbs regards as “the most important document of the nature of law, or edict, that has appeared since the Conquest;” being of the greatest interest, whether it be regarded in its bearing on legal history or in its ultimate constitutional results.<sup>66</sup> It is arranged in twenty-two articles, which were

<sup>59</sup> 1 St. Tr., 5.

<sup>60</sup> Id., pp. 7, 8.

<sup>61</sup> 1 Stubbs’s Const. Hist., ch. 12, pp. 466, 467. During the greatest part of this time Henry also was absent from England. Id., 467.

<sup>62</sup> He was consecrated bishop of Bangor, July 1, 1177, and does not appear to have acted afterwards in a judicial character. He died about 1190. Foss’s Biogr. Jurid.

<sup>63</sup> Id.

<sup>64</sup> The second is *Geoffrey Ridel*, a chaplain (of Hen. II), who about Christmas, 1162, succeeded Becket as arch-deacon

of Canterbury. Others were *Alan de Neville* (Nova-villa), *Geoffrey Monachus*; and lastly, ‘*Phillippo de Davencestræ*’ (Davenport), who was sheriff of Cambridge and Huntingdon for three years, from 13 Hen. II. Id., 1 Stubbs’s Const. Hist., p. 599.

<sup>65</sup> Select Charters, p. 134 to 139; 1 Stubbs’s Const. Hist., p. 468.

<sup>66</sup> Id., 469. The council in which it was passed is described as consisting of the archbishops, bishops, abbots, earls, and barons of all England; Becket, however, was absent. Id.

furnished to the judges about to make a general provincial visitation.<sup>67</sup> In it are observed several marks of the permanence of the old common law of the country. Not only is the agency of the shire-moot and hundred-moot—the four best men of the township, and the lord with his steward—applied to the carrying out of the edict, but the very language of the ancient law touching strangers and fugitive felons is repeated. It marks an epoch in the administration of, at least, the criminal law.<sup>68</sup>

Immediately after the assize of Clarendon, the king went to France.<sup>69</sup> Although the judicial work of the *curia regis* was now growing, and soon was more than the king and his regular ministers of state could dispatch,<sup>70</sup> yet the assize of Clarendon was carried out in 1166–7, by two of the king's ministers, the justiciar and the earl of Essex,<sup>71</sup> with the assistance of the sheriffs, who, acting under royal writ, as administrators of the new law, still engrossed the title of 'justitiæ errantes.'<sup>72</sup>

In 1167 there was an itinerant survey of the forests;<sup>73</sup> and in 1168 a thorough circuit of the shires; four barons of the Exchequer

<sup>67</sup> Id., pp. 469, 470.

<sup>68</sup> Id., 470 and 599. Inquest is to be held, and juries of twelve men of the hundred, and four of the township, are to present all persons accused of felony by public report. Id., p. 469. Mr. Green supposes that "in the provisions of this assize, for the repression of crime, we find the *origin* of trial by jury, so often attributed to earlier times." Green's Hist. of Engl. Peop., book 2, ch. 3, p. 167 of vol. 1. But to treat this assize, as 'the *origin* of trial by jury,' is inaccurate; that "the Anglo-Saxons had juries" has been shown in ch. 3, § 6, p. 63: that, before the Norman trial by battle, there had been trial by jury, seems to be recognized by Mr. Green in Hist. of Engl. Peop., book 3, ch. 1, pp. 220, 221; there is mention on p. 221 of 'the twenty-four jurors who were in Leicester *from ancient times*.'

<sup>69</sup> I Stubbs's Const. Hist., ch. 12, p. 468.

<sup>70</sup> Id., 599.

<sup>71</sup> Id., p. 470. They were sent to hear criminal and common pleas throughout England. In eighteen counties assizes were held by the justiciar (Richard de Luci), who was accompanied by Geoffrey de Mandeville, the earl of Essex, in seventeen of that number. Id., note 4. They were also entrusted with an expedition against the Welsh, during which the earl fell sick at Chester, and died there October 21, 1167. Foss's Biogr. Jurid.

<sup>72</sup> I Stubbs's Const. Hist., ch. 13, p. 600.

<sup>73</sup> *Alan de Neville* (Nova-villa), mentioned, *ante*, p. 197, note, held the forest of Savernac in Wiltshire, and from 12 Hen. II, for many years, filled the office of justice of the forests throughout all England. He died in 2 Ric. I. Foss's Biogr. Brit.; I Stubbs's Const. Hist., ch. 12, p. 471.

traversed the country as itinerant judges, and collectors of revenue.<sup>74</sup> The same officers acted, in 1169, with the addition of two.<sup>75</sup> According to Mr. *Foss*, *Reginald de Warenne*,<sup>76</sup> one of those four barons was regularly employed as a justice itinerant from 14 to 23 Hen. II (1168-1177), his pleas appearing in 21 counties.<sup>77</sup> The pleas before *William Basset*,<sup>78</sup> another of the four, as a justice itinerant, are from 14 to 26 Hen. II (1168-1180), during which time he acted in 24 different counties. *John Cumin* (or Comyn)<sup>79</sup> was in 1169, and the five following years, one of the itinerant justices.<sup>80</sup> *Gervase de Cornhill*<sup>81</sup> was one in 15, 16, 20 and 23 Hen. II (1169-1177). Each of the two last named was in several counties. *Hugh de Moreville* and *Robert de Stuteville* were justices itinerant for Northumberland

<sup>74</sup> Select Charters, part 4, p. 135. One of the four barons was *Richard* of Ilchester, a man of consummate skill in diplomacy as well as finance. He had acted as justiciar in Normandy, and was constantly employed in England as a justice and baron of the Exchequer. 1 Stubbs's Const. Hist., ch. 12, p. 468. The other three were *Reginald* of Warenne, *William Basset*, and *Guy*, the dean of Waltham. Besides these, *Richard de Lury* acted in Yorkshire and Cumberland, *Henry Fitz-Gerold* in Kent, and *William Fitz-John* in Dorset and Somerset. Id., p. 471. It is stated by Mr. *Foss*, that *William Fitz-John* had, in 9 Hen. II, held pleas in the county of Hertford; and that, in 1168, he amerced Samuel, the priest of Pilton, in Somersetshire. He further states that *Thomas Basset* (the son and heir of Gilbert, a grandson, or, as Dugdale believes, a younger son of Ralph Basset) was sheriff of Oxfordshire in 10 Hen. II, and, in 14 Hen. II, was one of the justices itinerant for the counties of Essex and Hertford. Biogr. Jurid.

<sup>75</sup> *John Cumin*, afterwards archbishop of Dublin, and *Gervase*, of Cornhill. 1 Stubbs's Const. Hist., ch. 12, p. 472.

<sup>76</sup> He was grandson of William de

Warenne, earl of Warenne and earl of Surrey, and was one of the sons of the second William, who succeeded to both earldoms. Under Henry II he became an attendant at the court; he appears as the first of the witnesses to a concord at the Exchequer, soon after *Richard de Luci* was made sole chief justiciary. *Foss's Biogr. Jurid.*

<sup>77</sup> He was also sheriff of Sussex for seven years, ending 23 Hen. II. He died before 31 Hen. II. Id.

<sup>78</sup> Lord of Sapcote in Leicestershire. He was a younger son of *Richard Basset*; and from 9 to 16 Hen. II (1163-1170) executed the office of the united counties of Warwick and Leicester. Id.

<sup>79</sup> He was one of the chaplains of Henry II, and employed on several important embassies. Id.

<sup>80</sup> Id.

<sup>81</sup> So called from the ward of that name in London, where he held in 2, 3, and 7 Hen. II, the post of sheriff. His next residence being in Surrey, he was appointed sheriff of that county in 10 Hen. II (1164), and remained in that office, with the exception of one year, until 1183. In 15 Hen. II, and for the seven succeeding years, he had also the office of sheriff in Kent. Id.

and Cumberland in 16 Hen. II (1170); and Robert de Stuteville acted in the same capacity in the following year. *Alan de Neville, junior*, was employed as a justice itinerant in twelve counties, from 16 to 25 Hen. II (1170 to 1179).<sup>82</sup>

10. *Deaths, in 1167, 1168 and 1169, of some of the King's oldest Counsellors. The treasurer succeeded by his son, Richard Fitz-Nigel (or Fitz-Neale) who continued in office for the remainder of the reign, and frequently shared in the duties of a justice itinerant.*

During the king's absence on the continent, he lost some of his oldest counsellors, the empress (his mother) and Geoffrey de Mandeville, in 1167, Earl Robert, of Leicester, in 1168, and Bishop Nigel, of Ely, in 1169.<sup>83</sup> The bishop was succeeded in the office of treasurer by his son *Richard Fitz-Nigel (or Fitz-Neale)*,<sup>84</sup> who continued in this office for the remainder of the reign, managed the revenue with care and adroitness,<sup>85</sup> and frequently shared in the duties of a justice itinerant; from the time when fines were introduced into the court—namely, about 28 Hen. II—his regularity of attendance is particularly observable.<sup>86</sup>

11. *Investigation, in 1170, of the conduct of sheriffs and other officers.*

The people's murmurs reached the king in Normandy. Soon after his return (March 1170) he held a great court in Easter at

<sup>82</sup> Id. Alan de Neville, junior, seems to have acted also as a justice of the forest, perhaps as deputy to his father. Id.

<sup>83</sup> Stubbs's Const. Hist., ch. 12, p. 468.

<sup>84</sup> After being educated in the monastery of Ely, he was placed in the Exchequer. In early youth he was the author of a work called 'Tricolumnus,' from its being arranged throughout in three columns. It was a tripartite History of England under Henry II—the first column treating of the transactions of the Church of England and the rescripts of the apostolical see; the second of the

remarkable exploits of the king, which he says exceed all human credibility; and the third of many affairs, both public and domestic, and also of the court and its judgments. (Madox ii, 345.) Foss's Biogr. Jurid; Green's Hist. of Engl. Peop., book 2, ch. 3, p. 175 of vol 1.

<sup>85</sup> So much that, notwithstanding the continual wars in which the country was involved, King Richard found on his father's death no less a sum than one hundred thousand marks in the Exchequer. Id.

<sup>86</sup> Id.

Windsor, and another immediately after at London. In this second assembly, he, by an extraordinary act of authority, removed all the sheriffs of the kingdom from their offices, and issued a commission of enquiry into their receipts, and the receipts of other officers;<sup>87</sup> directing particular enquiry into the execution of the assize of Clarendon; whether it had been justly carried out, and whether the officers employed in it had taken bribes, or hush-money. Very few of the sheriffs thus removed were employed again.<sup>88</sup>

*12. In 1170 reconciliation with Becket. He returned to England; but was soon brutally murdered. Of his great firmness of purpose; his capacity to make a sacrifice to a sense of duty.*

In 1170, Prince Henry was crowned, not by Thomas, of Canterbury, but by Roger, of York; nor was the prince's wife (daughter of Lewis VII) crowned with him. Expressions of dissatisfaction alarmed the king; he hastened into France, and on the 22d of July, near Freteval, concluded an arrangement providing, among other things, for restoration of the possessions of Becket and his adherents, his return to the exercise of his functions, and the advance of money to pay his debts. Becket landed at Sandwich, December 1, 1170. This celebrated man may have been imprudent, but he was as courageous in his last hours as he had been extraordinary in days that were past.<sup>89</sup> The brutal murder of December 29, 1170, is

<sup>87</sup>Select Charters, part 4, p. 140 to 143; 1 Stubbs's Const. Hist., ch. 12, pp. 472, 473. The barons to whom the commission is entrusted, are to receive evidence as to the receipts of the sheriffs and their servants, of the bishops and their temporal officers, of all special administrators of royal demesne, of itinerant officers of the Exchequer, and of all others who have had the opportunity of touching public money. Id.

<sup>88</sup>Id., pp. 473, 474. Referring to the Chronicle of Benedict as saying 'that some of the sheriffs were shortly after replaced,' Mr. Stubbs states that "an

examination of the lists of the sheriffs, given in the thirtieth report of the Deputy-keeper, shews that it was done in very few cases, and that none of the sheriffs now removed were employed again, except those who were members of the Curia Regis, as Ranulf Glanvill and William Basset." Id., p. 474, note.

<sup>89</sup>Foss's Biog. Jurid.; 1 Turner's Engl., ch. 8. pp. 277, 278; 1 Stubbs's Const. Hist., ch. 12, pp. 474, 475. As one portion of the pope's pacification, the younger Henry was now crowned with, instead of without, his wife; by the archbishop of Rouen, instead of the arch-

thought to have been by no bidding, by no "deliberate wish of Henry, but by the act of men who caught at a few hasty words which the king let slip in a moment of wrath."<sup>90</sup>

"Thus perished in the fifty-third year of his age, the man who, of all English chancellors, since the foundation of the monarchy, was of the loftiest ambition, of *the greatest firmness of purpose*, and the most *capable of making every sacrifice to a sense of duty, or for the acquisition of renown*."<sup>91</sup>

13. *Of the general body of justices from 1170 to and after 1175; including Thomas Basset, William Basset, lord of Sapcote, and Ranulph de Glanville.*

The general body of justices<sup>92</sup> seems now to have embraced men equally qualified to sit in the curia and exchequer, and to undertake the fiscal and judicial work of the eyre.<sup>93</sup> When one mentioned as a

bishop of York; and at Winchester instead of Westminster. *Id.*, 475. But Prince Henry died before his father. 2 Lingard's Engl., ch. 5, pp. 303, 304; 1 Turner's Engl., ch. 8, pp. 297, 298.

<sup>90</sup> 1 Mackintosh's Engl., p. 142 of Phila. ed., 1830; 5 Freem. Norm. Conquest, 445.

<sup>91</sup> 1 Lives of the Chancellors, ch. 3, p. 95 of 2d ed. (1846), p. 94 of Boston ed. 1874. "Both sides concur in ascribing to him brilliant talents, great acquirements and delightful manners." Of his letters which have come down to us, Lord Campbell says: "In these, although we should in vain look for the classical style and delicate raillery of Erasmus, we find a vigour, an earnestness, and a reach of thought quite unexampled in the productions of the age in which he lived." *Id.*, p. 100 of ed. 1846; p. 99 of ed. 1874.

<sup>92</sup> John Malduit held a place in the Curia Regis or Exchequer in 16 Hen. II (1170). In 1174 he was one of the justices itinerant for setting the assize in the counties of Nottingham and Lincoln; in the latter of which he is also mentioned

in the rolls of 22 and 23 Hen. II. Foss's Biogr. Jurid.

*Reginald de Luci* was in 19 Hen. II (1173), and two following years, one of the justices itinerant to set the assize for the united counties of Nottingham and Derby, being at that time governor of Nottingham for the king, in the rebellion of the earl of Leicester and others on behalf of Henry, the king's son. He died soon after the coronation of Ric. I. *Id.*

*Bertram de Verdun* was in 21 Hen. II, and the three following years, present as a baron in the judicial proceedings of the curia regis; and from the 22d to the 26th year of the reign, and, probably later, he acted as a justice itinerant in eight counties. *Id.*

<sup>93</sup> *Thomas Basset*, whose name frequently appears from 1175 among the barons acting judicially in the curia regis, was a justice itinerant for the six following years in no less than fifteen counties. With him *William de Lamvallei* was associated.

*William Basset*, lord of Sapcote in Leicestershire, mentioned, *ante*, p. 199,

justice itinerant appears to have visited no less than thirteen counties, the very extent of circuit is thought, by Mr. Foss, sufficient of itself to shew that he was a regular justiciar in the king's court, from which these itinera emanated.<sup>94</sup>

*John de Dover* and his companions made the assize of the king's demesnes in Warwickshire and Leicestershire in 20 Hen. II (1174), as the justices errant for these counties.<sup>95</sup> And the like was done by others in other counties.<sup>96</sup> Those appointed to impose the tallages on the different counties were not always selected from the members or officers of the *curia regis*;<sup>97</sup> a sheriff of a county sometimes acted as a justice itinerant to fix the assize on the demesnes of the crown in the county under his jurisdiction.<sup>98</sup>

as a justice itinerant, was, from 1175, frequently assisting in the *curia regis*, in which he continued to act till 1189.

*Hugh de Cressi*, a justice itinerant in 1175, and the five succeeding years, appears, in 1177, among the regular justiciars at Westminster.

*William Fitz-Ralph*, sometimes written Ranulph, and sometimes Randolph, who, in 1174, as sheriff of Nottingham and Derby, joined with one of the king's justices in setting the assize of those counties, held a high place in the king's court in the next six years, and, during those years, also went as a justice itinerant into fourteen counties.

*Bertram de Verdun*, who, in 1175, and the three following years, was regularly present as a baron, and acting judicially in the *curia regis*, was from the 22d to the 26th year, and, probably later, acting as a justice itinerant in eight counties. Foss's Biogr. Dict.; 1 Stubbs's Const. Hist. of Engl., p. 600.

<sup>94</sup> *Roger Fitz-Reinfrid* was a justice itinerant in 1176 (22 Hen. II), and acted in that capacity, occasionally, to the end of the reign—visiting in this period no less than thirteen counties: there are examples of pleas before him in the Exchequer at Westminster, from 25

Hen. II (1179). Foss's Biogr. Jurid.; citing Madox 83, 736.

<sup>95</sup> Foss's Biogr. Jurid.

<sup>96</sup> *Matthew de Escuris*, and *Hamon Morgan*, were of the justices errant appointed to impose the assize in the county of Hants; *Philip Fitz-Ernisc* was joined with others (believed to be John Cumin, Turston Fitz-Simon and Walter Map) to make the assize for Gloucester; *Milo de Mucegios* was, with *Walter de Hadfield*, of those to set the assize in Essex and Hertfordshire; *John Fukil* was the last in the list for Hampshire; *John Maldwit* was one of those for Nottingham and Lincoln; he is also mentioned on the rolls of 22 and 23 Hen. II.

<sup>97</sup> *Leonard*, who acted for Berkshire in this year, is simply described as 'a knight of *Thomas Basset*.' Foss's Biogr. Jurid.

<sup>98</sup> *William de Braiosa*, one of the justices itinerant to impose the assize on the king's demesnes in Herefordshire, in 20 Hen. II (1174), seems to have only been so appointed as sheriff of the county; an office which he held in that and the following year. His grandfather was a Norman baron, of the same name, who held between 50 and 60 lordships in Sussex, Berks, Wilts, Surrey and Dorset.

Among those who were in office at the same time as sheriffs and justices,<sup>99</sup> were *Robert de Stuteville*<sup>100</sup> and *Ranulph de Glanville*.<sup>101</sup> In 1175 the latter appears as a justice itinerant, his pleas being recorded not only in his own county of York, but in thirteen other counties.<sup>102</sup>

Philip de Braiosa, and Berta, daughter of Milo, earl of Gloucester, were parents of this William, who received in 24 Hen. II a grant from the king of the whole kingdom of Limerick. To the instigation of his wife has been attributed the murder at Bergavenny, of guests treacherously invited to a feast in that castle. *Id.*

*Guy de Strange*, who was sheriff of Shropshire at two periods, acted in 20 Hen. II as justice itinerant for setting the assize or tallage on the king's demesnes there. *Id.*

*Richard de Wilton*, sheriff of Wiltshire (from 10 to 27 Hen. II), set the assize as one of the justices itinerant in Devonshire, in 19 Hen. II (1173). In the following year *Robert de Luci* was joined to him to set the assize or tallage for Wiltshire.

With *Alured de Lincoln*, sheriff of Dorsetshire and Lincolnshire for six years, commencing 16 Hen. II, *Walter de St. Quintin* and others are mentioned as justices itinerant, who, in conjunction with him, fixed the assize or tallage in those counties in 20 Hen. II (1174).

With *Alard Banastre*, sheriff of Oxfordshire, in 20 and 21 Hen. II (1174-5), *Constantius de Oxford* was appointed a justice itinerant to assess the tallage in that county for the former year.

<sup>99</sup> *Robert Mantell* was for 12 years, from 16 Hen. II (1170), sheriff of the united counties of Essex and Hertford. In 1173, and the six following years, he acted as a justice itinerant not only in those counties, but also in eight others. In 1177 he appears as one of the justiciars in the curia regis. He was also employed as a justice of the forest in 17 and 18 Hen. II, and

again in 1 Ric. I. Foss's Biogr. Jurid.

*William Rufus* (or Ruffus), mentioned in § 4, p. 175, held the office of sheriff of Devonshire in 22 and 23 Hen. II, and of the united counties of Bedford and Buckingham from 26 Hen. II (with an interruption of a year or two), until the end of the reign and after. *Id.*

<sup>100</sup> Mentioned in § 9, p. 199, as justice itinerant in 16 and 17 Hen. II (1170-1), in Cumberland and Northumberland. He was then, likewise, sheriff of Yorkshire, an office which he retained for a few years afterwards. In 1174 he assisted *Ranulph de Glanville* at the battle near Alnwick, where the Scottish army was routed, and William, their king, taken prisoner. *Id.*

<sup>101</sup> He may have filled some office in the Exchequer, when, in 10 Hen. II (1164), he held for a year the office of sheriff of Warwick and Leicester, and is said to have been advanced to the sheriffalty of York. The respective parts of *Glanville* and *Robert de Stuteville*, in this sheriffalty, do not clearly appear. But Mr. Foss observes as to Glanville, that "during his northern sheriffalty his military talents were called into action by the incursion of the Scots, and his efficiency as an energetic and brave commander was soon proved;" and from this time "the valorous sheriff, brought more immediately under the king's notice, was employed in services for which he was not long in proving that he was equally fitted." *Id.*

<sup>102</sup> Although his appointments, as sheriff of Warwick and Leicester, and perhaps of York, took place about twelve years before his name is recorded as a justici-



14. *Of the king's employment in England during two years after his return from France, in 1175. The assize of Clarendon was, in January 1176, renewed and amplified in the assize of Northampton. Six circuits created; each having three judges. The northern circuit allotted to Ranulph de Glanville and two others.*

During the two years that Henry stayed in England, after his return from France in 1175, he was constantly holding councils and enforcing fresh measures of consolidation.<sup>103</sup>

The assize of Clarendon was renewed and amplified in the assize of Northampton, issued in January, 1176; the latter containing, like the former, instructions for itinerant justices.<sup>104</sup> One of the six circuits

cier; yet, after he was raised to the bench, several other counties were placed under his care as sheriff. *Id.*

<sup>103</sup> 1 Stubbs's Const. Hist., ch. 12, p. 482. He attended with his son at an ecclesiastical council held by the new archbishop, Richard of Dover, at Westminster, the week after his arrival, in May, 1175. That Whitsuntide he held his royal court at Reading. After a conference with the Welsh princes at Gloucester, he held a great council at Woodstock. Thence he went to Lichfield, "where he hanged four knights for the murder of a forester; thence to Nottingham, where he held a great visitation of the forests." He next went to York, to receive the submission of the Scots, and the homage promised by the king at the peace of Falaise. In October he held a great council at Windsor, and concluded a treaty with the king of Connaught." *Id.*, p. 483.

<sup>104</sup> Heretofore each year's account presents a different arrangement of circuits, or a different staff of judges. The assize of Northampton placed this jurisdiction on a more permanent footing. Its execution was "committed to six detachments, each consisting of three judges; to each detachment a cluster of counties, or a

circuit was assigned. Of the eighteen judges eight were barons, acting as sheriffs at the time, and, in most cases, one of the three was sheriff of one of the counties in his circuit." *Id.*, pp. 483, 484, 485; *Select Charters*, pp. 143, 144, 145.

*Robert Fitz-Bernard* was placed at the head of the three, to whom the counties of Kent, Surry, Sussex, Hants, Berks and Oxford were entrusted; he being at that time, and until 29 Hen. II, sheriff of the first-mentioned county. He died about 9 Ric. II.

*Roger Fitz-Reinfrid* acted as a justice itinerant in 1176 (22 Hen. II), and, occasionally, to the end of the reign. His extent of circuit (no less than thirteen counties) is thought sufficient of itself to shew that he was a regular justicier in the king's court. There are examples of pleas before him in the Exchequer at Westminster, from 25 Hen. II (1179). His name is attached to a charter dated at Oxford, in May, 1177, confirming the grant of the kingdom of Cork to Robert Fitz-Stephen and Milo de Cogan. He was also one of the witnesses to the will of King Henry, dated at Waltham in 1182. He was sheriff of Sussex for eleven years, from 23 Hen. II.

*Walter Fitz-Robert* was one of the

into which the assize of Northampton divided the kingdom, embraced the northern counties, and was allotted to *Ranulph de Glanville* and two others.<sup>105</sup>

15. *On the king's return to England in August, 1177, his attention called to the great number of judges. Court of five constituted out of the king's 'immediate servants.' In 1179 the council of Windsor rearranged the kingdom into four judicial divisions. Names of judges. Among those kept in office were Thomas Basset and Ranulph de Glanville. Who succeeded Richard de Luci as chief justiciary. In 1180 Glanville was in that office.*

The king left England in August 1177, and returned in the following July. His presence, as usual, was soon signalized by energetic action. The great number of justices being objected to as oppressive, his attention was given to the subject. Mr. Stubbs, referring to the eighteen who had gone on circuit in 1176, says:

"Without actually dismissing these, the king, by the advice of his counsel, chose five of his own immediate servants, two clerks and

three appointed to go into the eastern counties, and was so employed for several following years; taking part also in the Curia Regis.

*Turstin Fitz-Simon*, who had been, in 1173, a justice itinerant for setting the assize or tallage in Gloucestershire, was now (in 1176) one of the eighteen. His pleas are recorded in that and the two following years on the rolls, not only of the four counties first appropriated to him, but also of six others. In 1177 he is mentioned as holding pleas in the Exchequer.

*Ralph Fitz-Stephen*, who had been, in 1174, a justice itinerant for Gloucester, was now (1176) at the head of one of the six divisions. His pleas are recorded in the rolls of that and the four following years in 24 different counties. In 1184 he was among the justiciars and barons, before whom a fine was levied in the king's court.

*William Fitz-Stephen* (brother of the

last), was at the head of another of the six circuits. His pleas are recorded in 1176, and the four following years, not only in fourteen counties, but '*ad Scarrarium*' also.

*Richard Giffard* and *Hugh de Gundeville* were two others of the eighteen. The latter had been, in 1174, one of four justices itinerant to fix the tallage of Hampshire. His pleas extend over the four years following 1176. He died about the end of this reign.

*Gilbert Pipard* was the last of the three to whom the counties of Wilts, Dorset, Somerset, Devon and Cornwall were allotted.

*Gilbert de Columbiars* (or *Columbariis*) is mentioned, in the roll of 23 Hen. II, (1177) as one of the justices itinerant in Wiltshire.

<sup>105</sup> *Robert Pikenot* was one of the two; *Robert de Vaux* (or *de Vallibus*) was the other.

three laymen, before whom he ordered all the complaints of his people to be brought, reserving the harder cases for his own hearing as before, and decided with the counsel of the wise." Mr. Stubbs considers that "In this measure is traced the foundation of the court of King's Bench, as a separate committee of the Curia Regis; whilst the power of hearing appeals, as now reserved to the king, marks an important step in the development of the judicial system out of which the equitable and the appellate jurisdictions sprang."<sup>106</sup>

Soon, however, the council of Windsor, in 1179, re-arranged the kingdom into four judicial divisions, three of which, containing each two clerks,<sup>107</sup> and three knights,<sup>108</sup> had as heads, the bishops of Winchester, Norwich<sup>109</sup> and Ely,<sup>110</sup> and the fourth, embracing the North-

<sup>106</sup> I Stubbs's Const. Hist., ch. 12, pp. 486, 487. In another place Mr. Stubbs says: "From this date we fix the existence of the sittings of the Curia Regis '*in Banco*.' Their proceedings are still nominally transacted '*coram rege*,' but, nominally only. 'The five are to hear all the complaints of the kingdom, and to do right, and not to depart from the Curia Regis.' Questions, which are too hard for them, are to be referred to the king in person, who will decide them with the advice of the wise men of the kingdom." Id., ch. 13, p. 601.

<sup>107</sup> *Hugh Murdoc*, and *Reginald de Wisebec*, two of the king's chaplains, were selected. The former acted in the home district, not only in this but also in the following year.

<sup>108</sup> *Thomas Fitz-Bernard*, who, in 24 Hen. II, (1178), and the two following years, acted as a justice itinerant in several counties, was, in 1182, one of the justiciars and barons, before whom fines were levied in the curia regis.

*Richard Tocliffe*, called by some *Richard More*, and by others *Richard of Ilchester*, was, according to *Ralph de Diceto*, born at Soc, in the diocese of Bath. Brought up to the clerical profession, he, at an early period of his life, obtained an inferior situation in the king's court, where it was his duty to make

copies of all the summonses issued from it, and to write the writs and the entries on the rolls. He showed so much diligence and care, and his ability and industry were so prominent, that he was gradually advanced, until, at last, a place was assigned to him in the Exchequer on the right hand of the chief iustice, in order that he might be next to the treasurer, assist in the accounts, and carefully superintend the writer of the roll. Thus he was regularly present in the court at its sittings, and at length, assisting in its deliberations, became one of the justiciars. Under this character, he (when arch-deacon of Poitiers) is named, with several others, as sitting in the Exchequer in 11 and 12 Hen. II (1165-6). He is named first in the pleas of the counties in which he acted, as a justice itinerant, from 14 Hen. II, until the 20th year of the reign, 1174. In this year, on the 20th of October, he was consecrated bishop of Winchester. In 1176 he was appointed chief justiciary of Normandy. Foss's Biogr. Jurid.

<sup>109</sup> *John of Oxford*, bishop of Norwich.

<sup>110</sup> *Geoffrey Ridel*, bishop of Ely. '*Nicholaus, capellanus regis*,' was the second of five appointed to act in Cambridgeshire, and eight other counties. As to him, see *ante*, p. 197.

ern counties, had assigned to it six judges with *Godfrey de Luci*<sup>111</sup> at its head. There must have been a considerable number of new judges.<sup>112</sup> For though it is stated that into each of the four districts wise and learned men were sent, yet it is also stated that of the whole body assigned to the four districts, only eight had been before employed in a judicial capacity.<sup>113</sup> Among those eight were *Thomas Basset*,<sup>114</sup> *Michael Belet*,<sup>115</sup> *Gilbert Pipard*,<sup>116</sup> and one more distinguished than any of them. *Glanville's* capacity was so conspicuous, and his integrity so unblemished, that he was not only kept in office, but was among the six specially constituted to hear complaints in the curia regis at Westminster.<sup>117</sup>

*Richard de Luci* had been preparing for retirement.<sup>118</sup> Now resist-

<sup>111</sup> Henceforth, to the end of the reign, he regularly acted as a justiciary, not only in the king's court at Westminster, but on the itinera in various counties.

<sup>112</sup> *Robert de Witefeld* was a justicier, appointed by the great council held in 25 Hen. II (1179). He was sheriff of the county of Gloucester in 29 and 30 Hen. II, and is noticed in the Curia Regis in 30, 33, and 35 Hen. II. In 1179 there were also as new judges *Richard de Pec*, *Geoffrey Hose* (or Hoes) and *Nicholas Fitz-Torold*.

*Geoffrey* was sheriff of Oxfordshire, in 26 Hen. II, and two following years. The names of him and Nicholas appear as justices, not only in 1179, but also in 1180; and Nicholas probably acted subsequently.

<sup>113</sup> Stubbs's Const. Hist., ch. 12, p. 487.

<sup>114</sup> Mentioned, *ante*, p. 199. He died in 1183. Foss's Biogr. Jurid.

<sup>115</sup> The sheriffalty of various counties—Worcestershire, Wiltshire, Gloucestershire, Warwickshire and Leicestershire—was entrusted to him at various dates from 22 Hen. II, to the end of the reign. In 23 Hen. II (1177), and the following year, he acted as a justice itinerant in various parts of England.

In 1179 he was one of the five selected for the circuit comprehending ten counties of the home district. He acted in this character, not only in these but other counties, through many succeeding years—as late as 3 John 1201-2. Instances occur also of his partaking in the judicial duties of the Curia Regis at Westminster, fines being levied before him from 28 Hen. II, through the reign of Richard, till the third of John. About this period he died. *Id.*

<sup>116</sup> The sheriffalty of Gloucestershire was held by *William Pipard* for the four years previous to 14 Hen. II, and by *Gilbert Pipard* for that and the three following years. In addition to Gloucester, three other counties were entrusted to his superintendence as sheriff. *Id.*

<sup>117</sup> *Id.*, p. 487, and pp. 601, 602. *William de Bending*, *John Cumin*, (or *Conyn*), *Alan de Furnellis* (or *Furnaues*), and *Hugh de Gaerst*, made with *Glanville* and *Godfrey de Luci*, the six.

<sup>118</sup> By founding, in 1178, an abbey at Lesnes, or Westwood, in the parish of Erith, in Kent; endowing it with half of his possessions there.

ing the entreaties of his sovereign, who knew how to appreciate his abilities, he resigned the office of chief justiciary.<sup>119</sup> This office was entrusted for a short time to *Richard Tocliffe* (bishop of Winchester), *John of Oxford* (bishop of Norwich), and *Geoffrey Ridel* (bishop of Ely). In 1080, *Glanville* was appointed to succeed them.<sup>120</sup>

16. *The internal administration regular and peaceful. Of the judicial characters. After 1182, one of the most remarkable was Hubert Walter; another was Samson de Totington. He and Glanville were retained in office till the end of the reign.*

The internal administration during the king's latter years was regular and peaceful. Year after year the judicial and financial officers make their circuits and produce their accounts.<sup>121</sup> Of the judicial characters after 1182,<sup>122</sup> one of the most remarkable was *Hubert Wal-*

<sup>119</sup> And assumed the habit of one of the canons. His seclusion, however, was not of long duration, for he died on the 14th of July, 1179. He was buried in a tomb in the choir of his church. Foss's Biogr. Jurid.

<sup>120</sup> They acted, however, after this in the judicial business of the court. Fines were levied in 28 Hen. II (1182), before *Richard*, and also before *Geoffrey*. *Geoffrey* and *John* acted each as justice itinerant in the last year of Hen. II, or in 1 Ric. *Richard* died in 1188, and was buried in his cathedral. *Geoffrey* died Aug. 21, 1189, in the interval between the death of King Henry and the coronation of King *Richard*. *John*, of Oxford, seized with the mania of the age, devoted himself to the crusade in 1189, but being attacked by robbers on his way to the Holy Land, and despoiled of his property, he turned to Rome, where, representing the inadequacy of his means to support the expense of the undertaking, he procured absolution from his vow. The remainder of his life was devoted to the restoration of his church (which had been injured by a fire) and to other episcopal duties. He died June

2, 1200, and was buried in his own cathedral. He acquired the character of being an able negotiator, and a graceful orator; and notwithstanding what he did towards the crusade, he is spoken of as a man of sound judgment and quick discernment. To his other occupations he added that of an author, having written a history of all the kings of Britain, besides some occasional works, among which was a book, '*Pio Rege Henrico contra S. Thomam Cantuariensem*,' and an account of his journey into Sicily, and some orations and epistles to *Richard*, archbishop of Canterbury. Foss's Biogr. Jurid.

<sup>121</sup> 1 Stubbs's Const. Hist., ch. 12, p. 491.

<sup>122</sup> 28 Hen. II, *Gervase de Cornhill*, in curia regis. Supposed to have died in a year or two after.

28 Hen. II (and 2 following years), *Ranulph de Gedding*, in curia regis.

28 Hen. II (and 35 Hen. II), *Osbert de Glanville*, in curia regis.

30 Hen. II (1184), *Hugh Bardolf*, dapifer regis in conjunction with *Hugh de Morewick*, and afterwards with *William Rufus*. He acted till the end of the reign as a justicier, and assisted as a jus-

ter;<sup>123</sup> another was *Samson de Totington*.<sup>124</sup> In a short time after his election as abbot of St. Edmund's Bury, the pope appointed him a judge '*de causis cognoscendis*,' and not long afterwards he was constituted by the king one of the justices itinerant. His biographer<sup>125</sup> dwells with pride on the admiration which his judicial

tice itinerant in assessing the tallage of Wiltshire, of which he was sheriff. He also held the sherifalty of Cornwall, was former of the honor of Gloucester, and was nominated one of the lieutenants of the kingdom during Henry's absence in Normandy.

30 Hen. II (1184), *Hugh Murdoc* and *Ralph Murdoc*, present in the Exchequer, upon an acknowledgment as to lands. The latter acted as a justice itinerant in subsequent years.

30 Hen. II (1184), *Robert Marmion* and *Hugh de Morewic*, justiciers; and, afterwards, justices itinerant.

31 Hen. II (1185), *Hubert Walter*, in curia regis.

31 Hen. II (1185), *Nigel Fitz-Alexander*, in curia regis; and until 1 Ric. I, sheriff of Lincolnshire.

31 Hen. II (1185), Richard, arch-deacon of Wilts, and two others were, in in this year, custodes of the See of Exeter. It was probably while having that charge that he acted as a justice itinerant in the diocese.

1187, *Robert de Inglesham* and *Josceline* (arch-deacon of Chichester), justiciers. The latter was also a justice itinerant, fixing tallage.

33 Hen. II, *Thomas de Husseburn*, a justicier, and also a justice itinerant. Ralph (arch-deacon of Hereford) was also a justicier.

33 Hen. II, *William Briwer* associated with two others in fixing the tallage of Wiltshire. With the sherifalty of Devonshire he had been entrusted in 26 Hen. II; he continued to hold it till 1 Ric. I.

33 and 34 Hen. II, *William le Vava-*

*sour*, as a justice itinerant, or of assize.

33 and 35 Hen. II, *Ralph* (arch-deacon of Colchester), a justicier.

<sup>123</sup> A son of Hervey Walter, and Maud, who was daughter of Theobald de Valoines, and sister of Berta, the wife of *Ranulph de Glanville*. Brought up under that celebrated man to the two learned professions of the church and the law, he made such advance in both, that so early as 31 Henry II (1185), his name appears among the barons and justiciers, before whom fines were levied in the Curia Regis. Soon afterwards he was raised to the deanery of York. Thus early he founded a monastery of Præmonstratensian monks at his native place, West Dereham, in Norfolk. 2 Inst. 508; Foss's Biogr. Jurid. Of his subsequent career, more appears in the next chapter.

<sup>124</sup> A native of Totington, in the hundred of Weyland, in Norfolk. He became a monk in the abbey of St. Edmunds, in 1166, and after some promotion, of a minor character, was, at the death of Abbot Hugo, elected his successor. The wisdom of the choice was soon apparent; the affairs of the convent being soon extricated from the disorder into which weakness and indolence had plunged them. "He repressed the irregularities of the monks; successfully resisted the encroachments of the knights and townspeople; stood up in every way for the rights of his house, whether against prince or peer, and yet found favour in the sight of his sovereign." Foss's Biogr. Jurid.

<sup>125</sup> *Jocelin de Brakelonda*, who had been his chaplain. *Id.*

powers excited, and relates that one of the suitors cursed his court, where, he complained, neither gold nor silver would avail to confound his adversary. *Osbert Fitz-Hervey* (himself a judge)<sup>126</sup> said, 'That abbot is a shrewd fellow; if he goes on as he begins, he will cut out every lawyer of us.' In 1188 he was desirous of joining those who had assumed the cross, but King Henry found him so useful in the kingdom that he would not permit his departure. He and *Glanville* were retained till the end of his reign. "It is probable that in faithful discharge of duty, and an inventive or adaptative genius for legal proceedings," *Glanville* "came up to" the king's "ideal of a good judge."<sup>127</sup>

*17. Of the assize of Arms in 1181; the assize of the forest in 1184; Temple Church in 1185; and the ordinance of the Saladin Tithe in 1188. Also of an enactment as to the law of wreck.*

The assize of Arms "restored the national militia to the place which it had lost at the Conquest;" restored the old "military obligation of every freeman to serve in the defence of the realm."<sup>128</sup>

Some of Henry's most important councils were held, and acts performed, at his hunting palaces, such as Clarendon, Woodstock and Marlborough. The 'Assize of the Forest,' issued at Woodstock in 1184, is his first formal act concerning forests in existence.<sup>129</sup>

It is stated that "from the Temple near to the Holy Sepulchre at Jerusalem," was taken the plan of the Temple Church, "built by the Knights Templars in the reign of Henry the Second, on quitting their

<sup>126</sup> He was a justicier, from 28 Hen. II (1182), till 7 John. *Id.*

<sup>127</sup> 1 Stubbs's Const. Hist., ch. 12, p. 488. He was in the king's will named one of the executors. Foss's Biogr. Jurid.

<sup>128</sup> 1 Stubbs's Const. Hist., ch. 12, pp. 488, 489. The effect of the scutages, in commutation of personal service, was to diminish the military force under the influence of the barons; providing the king with mercenaries for his foreign wars; the assize of arms was intended to create a

force for national defence, safer and more trustworthy than the feudal levies."

"It was renewed or re-issued by Henry III, in an expanded form, and in conjunction with the system of Watch and Ward; and subsequent legislation by Edward I, in the statute of Winchester, Henry IV, Philip and Mary, and James I, has brought it down, in principle, to our own times, as the *militia*." Select Charters, pp. 146, 147.

<sup>129</sup> *Id.*, p. 149 to 152.

former residence in Holborn, near Southampton buildings." It appears quite certain that, in the year 1185, the church was dedicated by Heraclius, the patriarch of the church in Jerusalem.<sup>130</sup>

In 1188 was the ordinance of the Saladin Tithe; the importance of which, constitutionally, consists in its being the first attempt to bring taxation to bear on personal property, and on the fact of the employment of local jurors to determine the liability of individuals.<sup>131</sup>

"Formerly it had been held that in cases of shipwreck, unless the vessel were repaired by the survivors within a given time, it became with the cargo, the property of the crown, or of the lord of the manor having right of wreck. The injustice of this custom was mitigated by Henry I, who exempted from forfeiture every ship from which a single mariner or passenger had escaped alive; but after his death, under the pretence that the consent of the baronage had not been obtained, the ancient claim was revived and exercised till Henry II enacted, that even if a beast escaped by which the owner could be ascertained, he should be allowed three months to claim his property."<sup>132</sup>

18. *Generally as to Henry's Laws; and the matters for which his reign is commended; especially of him as a legislator and administrator. He died July 6, 1189.*

"King Henry the Second wrote a book of the common laws and statutes of England, divided into two tomes, and according to the same division intituled the one *Pro Republica Leges*, and the other *Statuta Regalia*, whereof not any fragment doth now remain."<sup>133</sup>

In another volume of *Coke* "the reign of King Henry II is commended for three things: 1. That his privy counsel were wise and expert in the laws of the realm; 2. That he was a great defender and maintainer of the rights of his crown and of the laws of his realm; 3. That he had learned and upright judges, who executed justice according to his laws."<sup>134</sup>

<sup>130</sup> Ireland's *Inns of Court*, pp. 13, 15 of ed. 1800; citing Stowe, vol. 1, p. 745; Penny Magazine for 1832, p. 116. Of Temple Church, there are representations in Mr. Ireland's volume, and also in the Penny Magazine.

<sup>131</sup> As had been done in 1181, in the assize of Arms. *Select Charters*, pp. 152, 153.

<sup>132</sup> *Constable's case*, 5 Rep., 108 b; *Sheppard v. Gosmold*, Vaughan, 106;

*Geere v. Burkensham*, 3 Lev. 85; *Simpson v. Bethwood*, Id. 307; 1 Ld. Raym. 388; 6 Mod., 149. Leg. Sax., 313, 342, and Palgrave ii, lxvii, are cited in 2 Lingard's Engl., ch. 6, p. 356.

<sup>133</sup> Such is Coke's language in preface to 3 Rep., p. xxii of Lond. ed., 1826, where, in the margin, the editor refers to "the laws of Hen. II, in Wilkins's Saxon Laws, p. 318-338."

<sup>134</sup> 2 Inst., 29.



In a preface (to Glanville), mentioned as "adapted from the Institutes of Justinian,"<sup>135</sup> there is the following:

"Our king disdains not to avail himself of the advice of such men (although his subjects), whom, in gravity of manners, in skill in the law and customs of the realm, in the superiority of their wisdom and eloquence, he knows to surpass others, and whom he has found by experience most prompt, as far as consistent with reason, in the administration of justice, by determining causes and ending suits, acting now with more severity and now with more lenity as they see most expedient."<sup>136</sup>

Therewith may be noticed observations of Mr. Green and Mr. Stubbs. The former says of Henry II:

"It was by successive 'assizes,' or codes issued with the sanction of the great councils of barons and prelates which he summoned year by year, that he perfected, in a system of reforms, the administrative measures Henry the First had begun."<sup>137</sup>

In the opinion of Mr. Stubbs, "Henry II is the first of the three great kings who have left on the constitution indelible marks of their own individuality."<sup>138</sup> Observing that "the consent of the historians of the time makes him, first and foremost, a legislator and administrator"<sup>139</sup>—that "in every description of his character, the same features recur, whether as matters of laudation or of abuse,"<sup>140</sup> Mr. Stubbs proceeds to the question, 'How many of the innovating expedients of his policy were his own?' and answers thus:

"Some parts of it bear a startling resemblance to the legislation of the Frank emperors; his institution of scutage, his assize of arms, his inquest of sheriffs, the whole machinery of the jury, which he developed and adapted to so many different sorts of business—almost all that is distinctive of his genius—is formed upon Karolingian models, the very existence of which within the circle of his studies or of his experience, we are at a loss to account for. It is probable that international studies in the universities had attained already an important place; that the revived study of the Roman

<sup>135</sup> I Stubbs's *Const. Hist.*, ch. 12, pp. 494, 495, *note*.

<sup>136</sup> P. xxxviii, of Beames's *Glanville*, ed. 1812.

<sup>137</sup> Green's *Short Hist.*, ch. 2, § 8, p.

137; I Green's *Hist. of Engl. Peop.*, book 2, ch. 3, p. 167.

<sup>138</sup> I *Const. Hist.*, ch. 12, p. 446.

<sup>139</sup> *Id.*, p. 492.

<sup>140</sup> *Id.*, p. 494.

law had invited men to the more comprehensive examination of neighbouring jurisprudence."<sup>141</sup>

At the time of his last illness, Henry was on the Continent. He died on the 6th of July, 1189, and was buried in the choir of the convent of Fontevrauet.<sup>142</sup>

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## CHAPTER XII.

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### INSTITUTIONS IN THE REIGN OF RICHARD I, OR CŒUR DE LION—1189 TO 1199.

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*1. Of Richard's coronation, September 3, 1189. His not appreciating faithful performance of official duty. While Glanville was arranging to go to the Holy Land, Richard was selling the highest offices. William de Longchamp is the chancellor. Who are the justiciars, and the council to assist them.*

Richard (the eldest surviving son of Henry II, and his queen) being on the continent at his father's death, the queen, in conjunction with Ranulph de Glanville, the justiciar, acted in Richard's absence.

<sup>141</sup> Id., 494, 495. In a note Mr. Stubbs says, that "before the end of the reign of Henry II, the procedure of the Roman civil law had become well known by the English canonists, although its influence was not allowed much to affect the common law of the kingdom." Id., 494, note 1.

<sup>142</sup> 10 Harl. Miscel. 290; 2 Lingard's Engl., ch. 5, p. 389. Sir James Mackintosh says, he "died at the castle of

Chinon, on Thursday, the 5th of July, 1189, in the thirty-fifth year of his reign, and fifty-seventh of his age." 1 Mackintosh's Engl., p. 147 of Phila. ed., 1830. "He died in the fortress overhanging the Vienne, in that famous Chinon, where brother had imprisoned brother in the days when his forefathers were simple counts." 5 Freem. Norm. Conquest, p. 449. Fontevraut is mentioned in Bayle's Dictionary.

After receiving investiture as duke of Normandy, he crossed to England.<sup>1</sup> His splendid coronation on the 3d of September, 1189, was disgraced by a massacre of Jews during the state dinner.<sup>2</sup>

In preparing for his crusade he was not sufficiently scrupulous about the means of raising money.<sup>3</sup> Though Richard Fitz-Nigel (or Fitz-Neal—mentioned in ch. 11, § 10, p. 200,) was retained in the office of treasurer and raised to the bishopric of London, yet in other cases, appreciation of faithful performance of official duty was not sufficiently shewn. Glanville, who, as chief justiciary, assisted at Richard's coronation, and was sent by him to restrain the massacre of the Jews, was, according to some authors,<sup>4</sup> imprisoned until he paid an enormous fine. As to this, the view of Mr. Foss<sup>5</sup> differs somewhat from that of Mr. Stubbs.<sup>6</sup> But whichever may be right, it is quite certain that Glanville retired from service in the kingdom, and was arranging<sup>7</sup> for a journey to the Holy Land,<sup>8</sup> while Richard,

<sup>1</sup> I Stubbs's Const. Hist., ch. 12, p. 495.

<sup>2</sup> I Turner's Engl., ch. 10, pp. 362, 363, 364; I Mackintosh's Engl., p. 153 to 155 of Phila. edi., 1830.

<sup>3</sup> I Turner's Engl., pp. 364, 365; Select Charters, p. 256 to 258.

<sup>4</sup> Foss's Biogr. Jurid.; I Turner's Engl., 361.

<sup>5</sup> Biogr. Jurid.

<sup>6</sup> I Stubbs's Const. Hist., ch. 12, p. 495.

<sup>7</sup> Previous to his departure, he devised his property to, or among, his three daughters; one of whom, Matilda, married *William de Auberville*, who, in 1182 (28 Hen. II), was at Westminster, acting as a justicier, and, in 6 Ric. I (1194-5), was alive, being then party to a suit relative to partition of the property. The second daughter, Amabilia, married *Ralph de Arden* (or *Arderne*), who was sheriff of Hereford from 1184 to 1189, and, in the latter year, acted as a justice itinerant in that and other counties (Shropshire, Gloucestershire and Staffordshire); Foss's Biogr. Jurid.

<sup>8</sup> According to Foss, there is evidence of his being with the king in Normandy on his way to the Holy Land, as he is the first of the witnesses attesting a royal charter given under the hand of John de Alencon, the vice chancellor, 'apud Moret,' on April 11, 1190, I Richard I (Madox I, 77), and he afterwards travelled towards Jerusalem in company with Baldwin, archbishop of Canterbury, and Hubert Walter, his nephew, bishop of Salisbury, and landed at Tyre about Michaelmas, 1190; all of them having been dispatched by King Richard to assist at the siege of Acre, and having previously, according to some accounts, accompanied the king himself through France as far as Marseilles. He and his companions reached Acre, before which Archbishop Baldwin first fell a victim, and then before the end of the year, Ranulph de Glanville; not, as sometimes stated, in the heat of battle, but '*ex aeris nimia corruptione.*' Biogr. Jurid.

to his disgrace, was selling the highest offices of the kingdom.<sup>9</sup> Before Richard's coronation as king, and while he assumed the title of 'Dominus Angliæ,' *William de Longchamp*<sup>10</sup> was appointed chancellor. He obtained greater favours afterwards.<sup>11</sup> At the council of Pipewell, September 15, 1189, *William de Mandeville*, earl of Albemarle and Essex, was appointed to the chief justiciaryship in conjunction with *Hugh Puser*<sup>12</sup> (or Pudsey) the aged Bishop of Durham, now made earl of Northumberland."<sup>13</sup> Two months afterwards the earl of Albemarle and Essex died at Rouen in Normandy, and the king named Longchamp in his place,<sup>14</sup> assigning the rule of northern counties to the bishop of Durham, and that of southern to the bishop of Ely, and at the same time appointing to assist them as a council several of the justices, to-wit: William Mareschall<sup>15</sup> (or

<sup>9</sup> Mr. Stubbs mentions that for the chancellorship Reginald, the Lombard, had bidden £4,000; and that William de Longchamp paid for it £3,000, although he was the king's most trusted friend. 1 Stubbs's Const. Hist. ch. 12 p. 495, to 497; citing on p. 497 R. Devizes p. 9.

<sup>10</sup> A Norman who had been in the employment of Geoffrey, the natural son of King Henry; and afterwards was taken into that of Richard, while earl of Poitiers. Foss's Biogr. Jurid.

<sup>11</sup> He was confirmed in his office on Richard's coronation; and at the council of Pipewell on Sept. 15, was nominated to the See of Ely. Id.; 1 Stubbs's Const. Hist., ch. 12, p. 497.

<sup>12</sup> Said to have been the son of a sister of King Stephen. In that reign he became treasurer of York, archdeacon of Winchester, and ultimately bishop of Durham. He added to the cathedral the beautiful building called the Galilee; and his munificence extended throughout his diocese in many useful and pious works. Henry employed him, in 1188, in collecting in Scotland the dime he had imposed for the expedition which he then purposed to the Holy Land.

Foss's Biogr. Jurid.

<sup>13</sup> For which the bishop gave a large sum; the king, with a sneer, remarking upon his being thus able to make a young earl out of an old bishop. Foss's Biogr. Jurid. Mr. Stubbs says "he gave 2,000 marks for the county; and for the justiciaryship a large sum, which is described in Benedict (p. 91) as 1,000 marks; but Richard of Devizes fixes the whole sum wrung from him at £10,000." 1 Stubbs's Const. Hist., ch. 12, p. 497, note 3; citing R. Devizes, p. 8.

<sup>14</sup> Foss's Biogr. Jurid.

<sup>15</sup> The grandson of Gilbert, and the second son of John, who held the office of marshal of the court (*magistratum marisc. curiæ nostræ*) the former under Henry I, and the latter under Henry II. He had been surety for King Richard that he would meet the king of France at Easter to proceed to the Holy Land; and was now one of the justiciars. By Richard's favour he married Isabella, daughter and heir of Richard Strongbow, earl of Pembroke, whereby he became possessed of all the large inheritance of the late earl, both in England and Ireland. Id.

Marshall), Hugh Bardolf,<sup>16</sup> Geoffrey Fitz-Peter,<sup>17</sup> William Briwer,<sup>18</sup> Roger Fitz-Reinfrid,<sup>19</sup> and Robert de Witefeld.<sup>20</sup>

2. *Names of justices in 1 Ric. I. One of them is William Fitz-Stephen, supposed to be the author of Archbishop Becket's life.*

In the first year of Richard's reign, there were among the justices the subjoined names,<sup>21</sup> and also that of *William Fitz-Stephen*, who is mentioned (in 1176) in ch. 11, p. 206, *n*, and now appears as a justice itinerant in Shropshire. Mr. Foss thinks there are many grounds for identifying him with a remarkable man of the same name who flourished at the same period—*William Fitz-Stephen*, the author of 'The Life and Passion of Archbishop Becket,' in which is introduced

<sup>16</sup> Mentioned (in 1184) in ch. 11, p. 209, *n*. His pleas in the itinera in several counties are recorded in the great rolls of 1 and 2 Ric. II. *Id*.

<sup>17</sup> In 31 Hen. I, and till the death of that king, he was one of the justices of the forest. He was, in 1 Ric. I, a justice itinerant in various counties; and was afterwards sheriff of the counties of Essex and Hertford. *Id*.

<sup>18</sup> Mentioned (in 33 Hen. II) in ch. 11, p. 210, *n*. He acted in fixing the tallage in 1 Ric. I, in Cornwall and Berkshire. *Id*.

<sup>19</sup> Mentioned in ch. 11, p. 203, *n*, and p. 205, *n*. He was sheriff of Berkshire, in 1 Ric. I. Foss's Biogr. Jurid.

<sup>20</sup> Mentioned in ch. 11, p. 208, *n*. His name appears as a witness to a final concord in 3 Ric. I. *Id*.

<sup>21</sup> *William Fitz-Alan* and *Hugh Pantulf* were justices itinerant in Shropshire, Hereford, Gloucester and Stafford; Pantulf being in three and Fitz-Alan in all four of them. Of Shropshire, the sheriffalty was held by Pantulf from 26 Hen. II (1180), to 1 Ric. I (1189-90), and after him by Fitz-Alan till the end

of Richard's reign. Foss's Biogr. Jurid.

*William Fitz-Aldelm* (or Aldelin) was sheriff of Cumberland in the first nine years of Richard's reign and one of the justices itinerant in that county and in Yorkshire in 1 Ric. I, and in the former again in 8 Ric. I. *Peter de Ros* was a justice itinerant in Cumberland in 1 Ric. I; in the 9th year of this reign he, with several associates, fixed the tallage in the same county. *Id*.

*Nigel Fitz-Alexander*, a justice itinerant in the counties of Buckingham, Bedford and Lincoln, and a justicier of the forest in Yorkshire. *Id*.

*Walter Fitz-Robert*, mentioned in ch. 11, p. 205, *n*, was from 1176 till 5 Ric. I, present on several occasions in the Curia Regis as one of the justices and barons. He joined the expedition into Normandy in 6 Ric. I, and died in 1198. *Id*.

*Gilbert de Glanville*, who, when archdeacon of Lisieux, was on July 16, 1185 (31 Hen. II), elected bishop of Rochester, appears among the justiciars in 1 Ric. I, and acted as a justice itinerant in several counties. In 5 and 7 Ric. I, fines

the description of the city of London, printed in Stow's 'Survey.'<sup>22</sup>

3. *Of Richard's departure from England, accompanied by a vice-chancellor with a Great Seal. How, in a shipwreck, the seal was lost for a time. At Cyprus, in the spring of 1191, Richard married Berengaria, daughter of the king of Navarre; she was crowned Queen of England.*

On the 11th of December, Richard left England for France, having selected *John de Alencon*<sup>23</sup> to accompany him as vice-chancellor. Although, no doubt, one great seal was left with *William de Longchamp*, then chancellor and chief justiciary in England, yet another was entrusted to this deputy, in attendance on the king, to be used according to his pleasure.<sup>24</sup>

were levied before him. Id.

*Robert de Hardres*, who, in 1185, was one of the custodes of the See of Coventry, was in 1 and 8 Ric. I, one of the justices itinerant in the county of Lincoln.

*Thomas de Hussburn*, a justice itinerant in 1 Ric. I, and also a justicier from 5 Ric. I, to the end of the reign.

*Robert de Inglesham*, who, in 31 Hen. II, was one of the custodes of the bishopric of Worcester, and in the next year was appointed archdeacon of Gloucester, was in 1187 one of the justiciers before whom a fine was levied, and in 1 Ric. I, a justice itinerant in Hampshire and Devonshire.

*Fosceline* (archdeacon of Chichester) who, in 31 Hen. II (1185), was one of the custodes of the bishopric of Exeter, and afterwards was a justice before whom a fine was acknowledged, appears in 1 Ric. I (as well as in preceding years) as a justice itinerant in various counties.

*Robert Marmion*, who towards the end of Henry's reign was entrusted with the sheriffalty of Worcestershire, continued to hold this office in 1 Ric. I, and was a justice itinerant on several occasions during this reign.

*Ralph Murdac* was, in 1 Ric. I, among the justices itinerant of no less than ten

counties. He was sheriff of Derbyshire and Nottinghamshire from 27 Hen. II to 1 Ric. I.

*Henry de Northampton*, in 1 Ric. I, a justice itinerant.

*Ralph*, archdeacon of Colchester, was in 1 Ric. I, a justice in various counties.

*William de Stuteville*, in 1 Ric. I, a justice itinerant in Yorkshire, and in the next year sheriff of Northumberland. His wife, Berta, was niece of Ranulph de Glanville.

*William le Vavasour* was, in 1 Ric. I, a justice in the northern counties.

*William*, archdeacon of Totness, was one of the justiciers in the Curia Regis, before whom a fine was levied in 1189.

<sup>22</sup> The last acts of the justice are about (1190 or 1191) the period assigned for the death of the author; as to whom there may be reference to Fuller's *Worthies*, vol. 2, p. 373, of ed. 1840; and to Allibone's *Dict.*, tit. Fitz-Stephen, Wm.

<sup>23</sup> Probably one of the clerks of the chancery; raised to the archdeaconry of Lisieux in 1185.

<sup>24</sup> There are six charters '*data per manum Johannis de Alenconi, Archidiacono, Lexoviensis, vire cancellarii nostri*,' granted by Richard when abroad in January, March, June and July, 1190. Foss's *Biogr. Jurid.*

Richard was engaged to Alice, sister of Philip, king of France, before he saw Berengaria, daughter of the king of Navarre. Soon after ascending the throne he sent his mother to ask Berengaria in marriage. In 1190-91, when Richard and Philip were in Sicily, an agreement to release Richard from the contract to marry Alice was made by Philip before his departure from Messina for Acre. Upon receiving a message from Richard announcing himself free to receive the hand of Berengaria, Queen Eleanor accompanied her to Messina. Soon Eleanor left for England, leaving her daughter, Joanna, the queen of Sicily, to be with Berengaria in one vessel, while Richard was in another, of his fleet, to sail for Palestine. In a third vessel was Roger Malus Catulus, one of Richard's chaplains.<sup>25</sup> Two charters under his hand are extant, dated March 27, and April 3, 1191.<sup>26</sup> In a storm which dispersed the fleet, the vessel with Malus Catulus aboard was wrecked; he was drowned; and the king's seal, stated to have been suspended round the neck of Catulus, was lost with him, at least for a time. The vessel with Joanna and Berengaria arrived off Cyprus before that with Richard, but did not enter a harbour until he had landed. In the capital of this isle (of Cyprus) on the 12th of May, 1191, he married Berengaria and caused her to be crowned; soon afterwards they arrived at Acre, where the war was raging.<sup>27</sup> The Christians entered Acre July 12 (1191).<sup>28</sup>

4. *How the office of justiciar, as well as that of chancellor, was filled by Longchamp; and how he kept the bishop of Durham in retirement.*

"Scarcely had Richard left England, when the two bishops" (of

<sup>25</sup> 1 Turner's Engl., ch. 10, p. 370 to 372; Miss Strickland's Queens of England, vol. 2, p. 9 to 15; Foss's Biogr. Jurid.

<sup>26</sup> Rymer, i, 53, and Monast. v, 565; cited in *Id.*

<sup>27</sup> *Id.*; 1 Mackintosh's Engl., p. 156, of Phila. edi., 1830; 1 Stubbs's Const. Hist., ch. 12, p. 506, *note*. The seal may have been recovered with the dead body of Malus Catulus. *Ibid.*

*Bertrand de Verdun* (mentioned in ch. 11, p. 203, *n.*) was surety for per-

formance on Richard's part of the agreement between him and the king of Sicily. Foss's Biogr. Jurid.

<sup>28</sup> "The two kings divided the town, the prisoners and other booty between them." 1 Mackintosh's Engl., p. 157 of Phila. edi., 1830. Acre was committed to the custody of Bertrand de Verdun. In or about 1196, he died at Jaffa (the ancient Jappa) whereof Richard had gained possession, and was buried at Acre. Foss's Biogr. Jurid.

Durham and of Ely) "quarrelled at the Exchequer. Both had recourse to the king (in Normandy), and in March a new appointment was made; William Longchamp became *chief* justiciar, and to Bishop Hugh the jurisdiction of the north was again entrusted. But on the return of the latter to England, he was arrested by his colleague, no doubt under the king's orders, and kept in forced retirement as long as the power of the chancellor was maintained. Longchamp was now both justiciar and chancellor; in the June following he was made papal legate."<sup>29</sup>

"He took full advantage of his opportunities, lived in pomp and luxury, obtained great wardships and rich marriages for his relations, sold judicial sentences, exacted money by every possible title from every possible payer, and offended both the baronage and his own colleagues in the government."<sup>30</sup>

5. *Conduct of Longchamp to Geoffrey Plantagenet disapproved. How Longchamp was deposed. By whom he was succeeded as supreme justiciar; and who were the new justiciar's coadjutors. In whose hands the seal was placed during vacancy in the chancellorship. Of justices itinerant.*

In September, 1191, there was a new difficulty when Geoffrey Plantagenet returned from Tours, where he had been consecrated Archbishop of York.<sup>31</sup>

"Immediately on landing he was arrested by Longchamp's order, and treated with unnecessary ignominy."<sup>32</sup> He at once appealed to John" (the king's brother), "who, on this occasion, found the sympathy of the barons and bishops on his side. The chancellor, speedily discovering his error, disavowed the action of his servants and released Geoffrey, but he had given his enemies their opportunity. A council of the barons was called at London, and John laid the case before them; a conference was proposed near Windsor, but the chancellor failed to present himself. Excommunicated by the bishops and deserted by his colleagues, he hastened to London and shut himself up in the Tower. John, who was now triumphant, brought together a great council at S. Paul's, and there, before the barons, bishops and citizens of London, accused Longchamp. Then the

<sup>29</sup> Stubbs's Const. Hist., ch. 12, p. 498.

<sup>30</sup> Id.

<sup>31</sup> Stubbs's Const. Hist., ch. 12, pp. 498, 499.

<sup>32</sup> Mr. Foss, speaking of *Richard Fitz-Nigel* (or Fitz-Neale), bishop of London, says: "Under the regency of Wil-

liam de Longchamp, bishop of Ely, he possessed considerable influence, and it was by his interference that Geoffrey Plantagenet, archbishop of York, when seized and imprisoned by the orders of the chief justiciary, was liberated." Biogr. Jurid.



archbishop of Rouen<sup>33</sup> produced a commission, or letter, signed by Richard at Messina in the preceding February, appointing" or nominating "him supreme justiciar, with *William Marshall, Geoffrey Fitz-Peter, Hugh Bardulph* and *William Briwere* as coadjutors."<sup>34</sup> Longchamp, after a protest somewhat more dignified than was to be expected, surrendered his castles and was allowed to escape to the continent.<sup>35</sup>

Although John's proceedings were irregular, and doubt as to the authenticity of the commission to Walter has arisen, from its not having been produced till some months after his arrival in England, yet the important facts appear that "the assembly at S. Paul's acted as the council of the kingdom, heard the charges brought against the minister, and defined the terms of his submission; debated on and determined in favor of the archbishop's nomination."<sup>36</sup>

It was probably at this period that the seal was placed in the hands of *Benet*, 'Magister Benedictus,' to perform the necessary duties

<sup>33</sup> *Walter de Constantius* had been a canon of Rouen, and held a responsible post in the Curia Regis under Henry II. In 1175 he was raised to the archdeaconry of Oxford. In June, 1183, he was elected bishop of Lincoln, from which See he was promoted in the following year to the archbishopric of Rouen. In 1186 he was one of Henry's ambassadors to King Philip of France, and succeeded with him in obtaining a truce; in 1189 he and Baldwin, archbishop of Canterbury, were umpires to decide disputes between them. On Henry's death he invested Richard, in the cathedral of Rome, with the sword of Normandy; and attending him into England, assisted at his coronation, and was present at the council held at the abbey of Pipewell. He accompanied that king in his progress to the Holy Land, but returned to England in February 1191, escorting Queen Eleanor on her departure from Sicily. Foss's Biogr. Jurid..

<sup>34</sup> Stubbs's Const. Hist., ch. 12, pp. 499, 500. Mr. Stubbs says, "the arch-

bishop" (of Rouen) "was known to be an honest man of business, with no ambition to be a statesman." Id. p. 500.

<sup>35</sup> Hall. Mid. Ages, vol. 2, ed. 1853, p. 322, may be compared with 1 Stubbs's Const. Hist., ch. 12, pp. 499, 500. From the latter is the passage in the text.

<sup>36</sup> Mr. Stubbs considers "their action was in substance unconstitutional," for he says "there was as yet neither law nor custom that gave them a voice in the appointment or disposition of the justiciar, nor could they even assemble constitutionally without a summons, which the existing justiciar would never have issued. Yet," he observes, "they acted on that critical principle which more than once, in our later history, has been called into play, where constitutional safeguards have proved insufficient to secure the national welfare; and" (he adds) "the result justified their boldness; they acted as if in substance, though not in strict form, they represented the nation itself." Id., pp. 500, 501.

during the vacancy in the chancellorship.<sup>37</sup> In this year (1192) but little appears as to justices itinerant.<sup>38</sup>

6. *Of Richard's sickness in Asia; his truce with Saladin; embarkation on the Mediterranean and imprisonment in Austria. Administration by Walter de Constantius, the justiciar, until the agreement for Richard's liberation. In the latter part of 1193 the justiciaryship resigned by him and conferred on Hubert Walter, now archbishop of Canterbury. Of Hubert's victory over John; and Richard's return to England in the spring of 1194.*

Richard had advanced to Bethany within four miles of Jerusalem before his fatigue brought on a fever.<sup>39</sup> He proposed to Saladin a truce for three years, which was agreed to; and in October, 1192, embarked on the Mediterranean with his queen, sister, and other nobles. In tempests some were shipwrecked and others cast on shore; but few fared better. After being for six weeks tossed on the waves and separated from his queen, Richard was within three days' sail of Marseilles. Hearing of plans on the French coast for his seizure, he sailed back in the direction of Corfu. He seems to have arrived at the town of Goritz, before, on a horse, he set off, in the night, for Friesach. Travelling with speed and in disguise, accompanied by a lad who understood German, and by one other person, Richard, pressed by hunger, paused at a town near Vienna. He became the prisoner of Leopold, duke of Austria, who, for sixty thousand pounds of silver delivered him to the German sovereign. Under careful guard he was conveyed to a castle in the

<sup>37</sup> Afterwards a sentence of excommunication was pronounced against him by Longchamp, because he presumed to hold the Great Seal against the statutes of the king and kingdom, as the denunciator asserts, and contrary to his prohibition. Foss's Biogr. Jurid.

<sup>38</sup> *Adam de Tornoura* was one of four justices itinerant who, in 3 Ric. I (1191-2), imposed a fine of forty shillings on the hundred of Edelmeton (Edmonton) for a murder, and for not ap-

pearing on the first summons. *Id.*

*Simon de Kyme* acted in 3 Ric. I (1191) as a justice itinerant; and in 8 Ric. I, was one of those who set the tallage of Lincolnshire, of which county he was sheriff in the seventh and two following years of that reign. *Id.*

<sup>39</sup> Readers of Sir Walter Scott's delightful works are familiar with his picture of Richard and Saladin, in chapters 9, 10 and 11 of the *Talisman*.

Tyrol, and afterwards to the Emperor's residence at Hagenau and thence to Worms.<sup>40</sup>

The government of England was under the administration of Waller de Constantius,<sup>41</sup> not only until news of Richard's capture reached England in February 1193, but afterwards, until the terms of his liberation were settled.<sup>42</sup> In the latter part of 1193, the justiciaryship was resigned by him<sup>43</sup> and conferred on Hubert Walter, the bishop of Salisbury (mentioned in ch. 11, § 16, p. 209, and in this chapter in § 1, note, on p. 215), who, on Richard's pilgrimage, had acted as chaplain, treasurer, captain and ambassador. He was in command of the forces before Acre, and after visiting Jerusalem, led back the English army, visited Richard in captivity, and by him was sent home to raise the ransom and to succeed Reginald Fitz-Josceline as archbishop of Canterbury. Hubert was elected archbishop May 30, 1193; and was raised to the office of chief justiciary before the end of the year.<sup>44</sup>

"His appointment as justiciar was almost immediately followed by a complete victory over John, whose rebellion, on the news of Richard's release, he quelled by the prompt use of spiritual as well as temporal arms: in one week he obtained from the clergy a sentence of excommunication, and from the assembled barons a declaration of outlawry against him; and he was engaged in the reduction of the castles when Richard landed."<sup>45</sup>

One writer mentions the 13th of May, 1194, as the time of Rich-

<sup>40</sup> 1 Turner's Engl., ch. 10, p. 378 to 400 of ed. 1825; 1 Mackintosh's Engl., p. 161 to 166, of Phila. ed., 1830.

<sup>41</sup> He was cautious to avoid undertaking any important act without the consent of his council. Foss's Biogr. Jurid.

<sup>42</sup> The negotiations for Richard's ransom ended in the agreement that one hundred thousand marks of silver should be paid for his liberation. 1 Turner's Engl., ch. 10, p. 400, of ed. 1825; 2 Lingard's Engl., ch. 6, p. 345; 1 Mackintosh's Engl., p. 166, of Phila. ed. 1830.

<sup>43</sup> He died in John's reign. Foss's Biogr. Jurid.

<sup>44</sup> Mr. Foss says, in September; Mr. Stubbs says, at Christmas, 1193. 1 Const. Hist., ch. 12, p. 502. Mr. Foss mentions that his power was afterwards greatly increased by his being appointed legate of the apostolic See. Biogr. Jurid.

<sup>45</sup> 1 Stubbs's Const. Hist., ch. 12, p. 502. After being released at Mentz, Richard passed with speed to Cologne, and thence to Antwerp, whence he embarked in an English ship, and arrived at Sandwich after an imprisonment of a year, six weeks and three days. 1 Turner's Engl., ch. 10, p. 400.

ard's landing at Sandwich;<sup>46</sup> but March was the month.<sup>47</sup> According to Mr. Stubbs, he stayed in England, in 1194, "from March 13 to May 12."<sup>48</sup>

7. *Of additional justices before or about the time of Richard's return to England. William de Longchamp was restored, not to the office of chief justicier, but to that of chancellor.*

Before Richard's return to England, or about that time, there were some additional justices.<sup>49</sup> After that return William de Longchamp was restored to the office of chancellor, but not to that of chief justicier.<sup>50</sup>

8. *How Richard was occupied in his second visit to England. Of the great council in Nottingham in the spring of 1194; its measures. Sheriffs who had taken part in Longchamp's removal were displaced, yet transferred to other counties. Richard crowned a second time.*

Richard's second visit to England bore a strong resemblance to his first. It was occupied mainly with attempts to raise money.<sup>51</sup> After the surrender of the last of John's castles, a great court and council was held at Nottingham, attended by the queen mother, both the archbishops and several bishops and earls. The business lasted four days, from the 30th of March to the 2d of April. On the first day sheriffs were removed and the offices put up for sale. The

<sup>46</sup> 1 Mackintosh's Engl., p. 166, of Phila. edi. 1830.

<sup>47</sup> Mr. Turner says he "arrived at Sandwich 20th March, 1194." 1 Turner's Engl., ch. 10, p. 400.

<sup>48</sup> Select Charters, p. 241.

<sup>49</sup> Stephen de Turnham, who, in 1193, was appointed to conduct Queen Berengaria into Poitou, was, after the king's return, employed in the Curia Regis as one of the justiciers.

Ranulph de Blundevil (or Blandevil), earl of Chester, appears in 1193 as one of the justiciers before whom a fine was levied.

Stephen de St. Jacobo was a justicier

in 4 or 5 Ric. I.

Otho Fitz-William, who, from 28 Hen. II. to 2 Ric. I, was sheriff of Essex and Hertford, acted, in 1194, as iustice itinerant therein; and, in 1193 or 1194, was a justicier before whom a fine was levied.

Reginald de Argentine is at the end of a list of five justices itinerant who, in 1193, held pleas in Essex and Hertfordshire, of which counties he was afterwards sheriff. Foss's Biogr. Jurid.

<sup>50</sup> He was the first to discover Richard's prison, and to assist in his restoration to liberty. *Id.*

<sup>51</sup> Select Charters, pp. 258, 259.

second day was occupied with a question of outlawry against John, and Hugh of Nunant, bishop of Coventry, who had been his chief adviser. The third day (April 1) was devoted to finance; and the last day to hearing complaints against the king's brother, Geoffrey, and to the trial of Gerard de Camville.<sup>52</sup> Mr. Stubbs says:

"The political meaning of the several measures taken on this occasion is probably this: Richard recognized distinctly the fidelity of the chancellor, and thought it necessary to displace all the officers who had shewn any sympathy with John. But he was not prepared to continue to Longchamp the confidence which he, by his imprudence, had so dangerously abused. The sheriffs, as we learn from the Rolls,<sup>53</sup> were nearly all displaced; and in particular William Briwere,<sup>54</sup> Hugh Bardolf,<sup>55</sup> Geoffrey Fitz-Peter,<sup>56</sup> William Marshall,<sup>57</sup>

<sup>52</sup> Eldest son of Richard de Camville, the founder of Combe abbey in Warwickshire. Between his father's death and his own coronation, Richard, not assuming the style and title of 'king,' but only calling himself 'Dominus Angliæ,' made a charter confirming to Gerard de Camville and his wife, Nichola, all her right and heritage in England and Normandy, together with the custody and constableness of Lincoln castle. He was also made sheriff of Lincoln county. Nichola resolutely defended Lincoln castle when Longchamp laid siege to it, and compelled him to withdraw his forces. On the king's return, Gerard was not only deprived of the sheriffalty and constableness, but also of his own estate, and was reduced to the necessity of purchasing restitution of the latter with the king's favour, by a fine of 2,000 marks. Foss's Biogr. Jurid.

<sup>53</sup> 30th Report of the Deputy Keeper of the Records.

<sup>54</sup> He who had acted in 1 Ric. I, in fixing the tallage in Cornwall and Berkshire, acted in the same character in 9 Ric. I, in Nottingham and Derby. After the introduction of fines, his name is found among the justiciars before whom they were levied during the last four years of Richard's reign. After the king's cap-

tivity, he was one of the ambassadors sent to make a league with the king of France; and he was sheriff of several counties. Foss's Biogr. Jurid.

<sup>55</sup> Though the king punished *Hugh Bardolf* by discharging him from the sheriffalty of York and Westmoreland, yet he did not remain in disgrace. He appears as a justicier in the Curia Regis, on fines levied from 5 to 9 Ric. I; and, in the last four years of this reign, acted as a justice itinerant in various counties. He was one of those sent to York to determine a controversy between the archbishop and the monks there, and was also entrusted with the sheriffalty of the counties of Northumberland, Dorset and Somerset, Stafford, Wilts and Leicester. Id.

<sup>56</sup> *Geoffrey Fitz-Peter's* continued employment during Richard's reign is shewn by his presence when fines were acknowledged at Westminster; in July, 1198 (9 Ric. I), he was placed in the high office of chief justiciary. Id.

<sup>57</sup> Fines were levied before *William Mareschall* in 5 and 10 Ric. I. He held the sheriffalties of Lincoln and of Sussex during part of this reign; and, about its end, succeeded to the office of marshal upon the death of his elder brother without issue. Id.

Gilbert Pipard, and others who had taken a prominent part in the removal of Longchamp, were transferred to other counties, as if the king, although he could not dispense with their services, wished to show his disapproval of their conduct in the matter. Richard, however, was never vindictive, and would condone any injury for a substantial fine.<sup>58</sup>

At Winchester, on the Sunday after Easter, Richard was crowned a second time,<sup>59</sup> the archbishop of Canterbury officiating.

9. *Of the king's departure, in May, 1194, accompanied by Eustace with the Great Seal. Death, in 1195, of Hugh, bishop of Durham. Official acts of William Longchamp, until his death, in 1197.*

On the 12th of May, 1194, the king sailed for Normandy,<sup>60</sup> accompanied by Eustace,<sup>61</sup> with the Great Seal, for such business as might require it<sup>62</sup> while he was abroad.

In 1195, *Hugh Pusar*, or *Pudsey*, the bishop of Durham (mentioned in § 1 and § 4, p. 216, and p. 220,) died March 3; in July *William Longchamp* signed, in the character of *chancellor*, the treaty of peace between England and France (Rymer i, 66). In the next year he was present at Winchester, when a fine was levied before the king himself.<sup>63</sup> There is nothing to show that he did not con-

<sup>58</sup> Stubbs's Const. Hist., ch. 12, pp. 502, 503.

<sup>59</sup> It was apprehended, it might be supposed he had, by his captivity in Germany (if not, as was alleged, by a formal surrender of the kingdom of England to the Emperor, to receive it again as a fief), impaired or compromised his dignity as a crowned king. The Winchester coronation was intended as a solemn assertion that the royal dignity had undergone no diminution. The ceremony of anointing was not repeated, nor was the imposition of the crown a part of the public rite. Richard went in procession from his chamber to the cathedral, and there received the archbishop's blessing. The occasion resembles the crown-wearing festivals of the Norman kings, and was a revival of the custom which had

not been observed since Henry II wore his crown at Worcester, in 1158. 1 Stubbs's Const. Hist., ch. 12, p. 504.

<sup>60</sup> "Where he was almost immediately reconciled with John, and soon after restored to him the county of Mortain, the earldom of Gloucester and the honour of Eye giving him a pension of 8,000 pounds Angevin in lieu of his other estates and dignities." Id., p. 504.

<sup>61</sup> Not improbably one of the clerks in chancery.

<sup>62</sup> In the charters, which Eustace authenticated, the first of which is dated April 7, 1195, 6 Rich. I (New Foedera i, 65), he simply uses the terms '*tunc gerentis*,' or '*tunc agentis vice cancellarii*.' Foss's Biogr. Jurid.

<sup>63</sup> Foss's Biogr. Jurid.

tinue chancellor till his death. In 1196 he held the sheriffalty of Essex and Hertfordshire; and in the latter part of that year, he and Philip, bishop of Durham, were sent to Rome.<sup>64</sup> He, however, never reached his destination, for, falling sick on the journey, he died at Poitiers, on January 31, 1197.<sup>65</sup>

*10. Operations of justice; and names of justices in and after  
5 Ric. I.*

Under the administration of *Hubert Walter* much time was devoted to the expansion and modification of the plans, whereby Henry II had extended the operations of justice and its profits.<sup>66</sup> In addition to such of the justices before named as still remained in office, there were appointments embracing those whose names are subjoined.<sup>67</sup>

<sup>64</sup> To induce the supreme pontiff to remove the interdict which the archbishop of Rouen had pronounced against all Normandy. *Id.*

<sup>65</sup> And was buried in the Cistercian monastery of Pina. *Id.* Lord Campbell's account of Longchamp is in 1 Lives of the Chancellors, p. 106 to 115 of 2d ed. (1846); p. 105 to 115 ed. 1874.

<sup>66</sup> 1 Stubbs's Const. Hist., ch. 12, p. 505.

<sup>67</sup> 5 Ric. I, *William de Warenne*, a justice itinerant; from 7 Ric. to 1 John, a justicier at Westminster.

5 to 8 Ric. I, *Richard Fitz-Nigel*, a regular justicier. He died Sept. 10, 1198.

5 to 9 Ric. I, *Herbert Pauper* (bishop of Salisbury). He died May 9, 1217.

5 to 10 Ric. I, *William de St. Marie*, Ecclesia (bishop of London). He died March 27, 1224.

5 Ric. I, to end of reign, *Simon de Pateshull*.

6 Ric. I, to end of reign, *Richard de Heriet* and *Godfrey de Luci*.

1195, *Richard de Pec*, a justice itinerant.

6 Ric. I, *Hugh Peverell*, a justicier; and in 8 Ric. I, a justice itinerant.

7 Ric. I, *John Suthill* (abbot of Hyde), a justice itinerant in Dorsetshire; *William de Vere* (bishop of Hereford), justicier and justice itinerant; *William de Braiosa* (mentioned in ch. 11, p. 203 *n*), a justice itinerant in Staffordshire. For the last seven years of this reign he held the sheriffalty of Hereford county.

7 Ric. I, to the end of the reign, *Henry de Chastillon* (or Castillion), *William de Kunill*, (and perhaps *Osbert Fitz-Simon*) were justiciers.

8. Ric. I, *Roger de Stikeswald*, justice itinerant.

7, 8 and 9 Ric. I, *William de Glanville* and *Ralph* (arch-deacon of Hereford) were justiciers.

7 Ric. I, till end of the reign, *Geoffrey de Bocland* and *Oger Fitz-Oger*. The latter was, in 2 and 5 Ric. I, sheriff of Hampshire; and, in 7 Ric. I, a justice itinerant.

8 Ric. I, *Eustace de Ledenham* was one of the justices itinerant. *Hugh de Bobi* and *John de Garland* acted in different counties in setting the tallage.

II. *Of the visitation by the justices, in September, 1194, under an extensive commission. Its nature.*

Soon after the king's departure there was a visitation by the justices, in September, 1194, under a commission of an extensive character.<sup>68</sup>

"By the articles of this 'iter,' the constitution of the grand jury of the county is defined; four knights are to be chosen in the county court, these are to select, on oath, two knights from each hundred, and these two, also on oath, are to add by co-optation ten more for the jury of the hundred; a long list of pleas of the crown and other *agenda* of the judges, is furnished, which is comprehensive enough to cover all occasions of quarrel and complaint since the beginning of the reign. The sheriffs are forbidden to act as justices in their own shires;<sup>69</sup> the election of officers to keep the pleas of the crown, which is ordered by another article, is" perhaps, "the origin of the office of coroner, another limitation of the importance of the sheriffs. The justices are empowered to hear

8 to 10 Ric. I, *Philip of Poitiers* (bishop of Durham), a justicier.

9 Ric. I, *Baldwin de Cuserugg*, *Henry Fitz-Hervey*, *Robert Fitz-Robert* and *Henry de Kingston* were justices itinerant. *William de Rideware* was employed with *William Briwer* and *Simon Bassett* in fixing the tallage for Nottingham and Derby. *Peter de Ros*, with several associates, fixed the tallage in Cumberland. *Roger de St. Edmund* is the last of the five who fixed it for Norfolk and Suffolk. *Theobald Walter* was one of those to set it in Colchester.

9 Ric. I, *Ralph de Welleford*, a justicier, before whom fines were levied.

9 Ric. I, *Geoffrey*, arch-deacon of Berks, the first of four justices itinerant who set the tallage in that county.

9 Ric. I, to end of reign, *James de Poteina*, a justicier, and also a justice itinerant.

9 and 10 Ric. I, *Stephen de Turnham*, a justicier and justice itinerant.

10 Ric. I, *Roger Fitz-Reinfrid*, *Richard Flandrensis* (or Le Fleming), *Godfrey de Insula* and *William de Wrotham*

were justiciers.

*Philip Fitz-Robert*, *Geoffrey Haget* and *Ranulph* (treasurer of Salisbury church) were justices itinerant.

*Ralph de St. Martin* is named as one of those fixing the tallage for Surry county.

<sup>68</sup>Select Charters, p. 250 to 255; 1 Stubbs's Const. Hist., ch. 12, p. 505.

<sup>69</sup>Speaking of the 21st clause, which directs that a sheriff shall not be justice in his own county, Mr. *Stubbs* says, it "marks a distinct middle stage between the assize of 1166, in which the sheriffs share the office of justice with the itinerant barons and the 24th clause of Magna Charta, which forbids them to hold pleas of the crown." He says further, "The application of jury inquest to the ascertaining of the king's rights, in ch. 23, is also a precedent for similar acts under Henry III; and this whole chapter (23), as well as ch. 24," (of Select Charters) "has great social as well as constitutional significance." Select Charters, p. 251.



recognitions by great assize, where lands are concerned, up to the amount of five pounds of annual value; the Jews and their persecutors, the dead crusaders, the friends, debts and malversations of John, are to be brought into account. Inquiry is to be made into the king's feudal claims, wards, escheats, farms and churches. And the financial work of the judges is to be completed by the exaction of a tallage from all cities, boroughs and demesnes of the king."<sup>70</sup>

Mr. Stubbs considers "this visitation, which comprehends almost all the points of administrative importance which mark the preceding reign," as constituting "a stage in the development of the principles of election and representation. The choice of the coroner, and the form prescribed for the election of the grand jury, whether this commission originated them, or merely marked their growth, are" regarded by him as "phenomena of no small significance."<sup>71</sup>

12. *Of Hubert Walter, after 1194, as justiciar and legate. Whether the proclamation for preservation of the peace is the origin of the office of 'conservator of the peace.' Hubert Walter offered to resign the justiciarship in 1196, but retained the office two years longer. Eustace, bishop of Ely, succeeded Longchamp as chancellor. Of the 'Dialogus de Scaccario,' of which the author was Richard Fitz-Nigel, the treasurer. He died in Sept., 1198.*

The kingdom was, after 1194, practically, for the remainder of the reign, under the rule of Hubert Walter, who became papal legate in 1195, and acted as justiciar until 1198.<sup>72</sup>

The justiciar, on the reception of his legatine commission, in June, 1195, proceeded to York, where he held a great court for four days.<sup>73</sup> In the same year was issued a 'proclamation for the preservation of the peace,' which, Mr. Stubbs suggests, is probably the origin of

<sup>70</sup> 1 Stubbs's Const. Hist., ch. 12, pp. 505, 506.

<sup>71</sup> Id. The tallage of 1194 was followed by a scutage in 1195, levied on those tenants in chief, who had not accompanied the king to Normandy. This is the second scutage of the reign; the first was taken in the king's first year, on the pretence of an expedition to Wales. Id., p. 507.

<sup>72</sup> 1 Stubbs's Const. Hist., ch. 12, p. 505.

<sup>73</sup> On the first he directed his servants to hear pleas of the crown and assizes, whilst he himself and his officials held a spiritual court and heard pleas of Christianity; on the second he acted as legate, and visited St. Mary's abbey; on the third and fourth he held a provincial council, which passed fifteen important ecclesiastical canons. Id., 507.

the office of conservator of the peace, out of which, in the reign of Edward III, the existing functions of the justices of the peace were developed.<sup>74</sup>

*Hubert Walter*, in 1196, offered to resign the justiciarship, but afterwards saw reason to retain the office two years longer.<sup>75</sup> *Eustace*, mentioned in § 9, p. 226,<sup>76</sup> succeeded Longchamp, both in his bishopric and his chancellorship. He was raised to the bishopric of Ely August 9, 1197; and appears as chancellor in 1198.<sup>77</sup> *Richard Fitz-Nigel* (the treasurer) died September 10, 1198.<sup>78</sup>

13. *In 1198, in a council of barons, the king's demand of a force for war in Normandy, was denied, upon the ground that the lands were to render military service within England, and there only. In the same year there was a tax of five shillings on each hundred acres of land. Of the principle applied in the assessment.*

The history of the year 1198 furnishes two events of great importance. In a council of barons, at Oxford, Hubert Walter, the arch-

<sup>74</sup> *Id.*, 507; *Select Charters*, pp. 255, 256.

<sup>75</sup> *I Stubbs's Const. Hist.*, ch. 12, p. 508.

<sup>76</sup> He held, in 1195, the deanery of Salisbury; and thereto was added in the following year the arch-deaconry of Richmond. *Foss's Biogr. Jurid.*

<sup>77</sup> In Feb., 1198, *John de Alencon* was a witness to a charter under the hand of *Warine*, prior of Loches, *tunc agentis viem cancellarii nostri*. The name of *Eustace*, as chancellor, appears in a charter dated Aug. 22, 1198, '*apud Rupem Auree Vall*' (*Rymer* i, 67); he was officially present when a fine was levied at Westminster in the following year (*Hunter's Preface*). *Foss's Biogr. Jurid.*

<sup>78</sup> The '*Dialogus de Scaccario*,' which was composed in 23 or 24 Hen. II, and describes the Exchequer with all its officers and their duties, and the forms of proceeding and their origin, is esteemed

a most valuable legacy to his successors. Copies of it are preserved in the black and red books in the Exchequer. It is printed by *Madox* (ii, 331-452) at the end of his history of that court; and "in a preliminary dissertation" (*Mr. Foss* observes) "he has satisfactorily established the claim of the bishop to the authorship in opposition to that of *Gervas of Tilbury*, to whom it was for many years attributed." *Mr. Stubbs* has republished it, "as contributing an extraordinary mass of information on every important point in the development of constitutional principles before the great charter." *Select Charters*, p. 160 to 240. He remarks, that "even those portions of it which bear more directly on archæological and legal questions are worthy of scrutiny, as indications of the spirit of the time that was preparing for the great struggle for law against despotic misrule." *Id.* 160.

bishop and chief justiciary, laid before them a demand by the king that they should provide him a force for his war in Normandy.<sup>79</sup>

"The bishop of Lincoln, S. Hugh, of Avalon, the Carthusian friend of Henry II, declared that he would not assent to the grant. In vain the archbishop, and the treasurer, the bishop of London, pleaded the royal necessities; the independent prelate declared that the lands of his church were bound to render *military service within England, and there only*; he had, he said, fought the battle of his church for thirteen years; this impost he would not pay; rather than do so, he would go back to his home in Burgundy. To the archbishop's further discomfiture, the example of S. Hugh was followed by bishop Herbert of Salisbury, who had the regular ministerial training, and was closely connected with the ruling officers of the Exchequer."

The opposition was so far successful that the proposal was withdrawn; and shortly afterwards, *Hubert Walter* resigned the office of chief justiciary. This event is a land-mark of constitutional history: for the second time a constitutional opposition to a royal demand for money is made, and made successfully.<sup>80</sup>

The other remarkable matter of the year is the imposition of a carucage—a tax of five shillings on each carucate or hundred acres of land. This was the Danegeld, revived in a new and much more stringent form; and in order to carry out the plan, a new survey on the principle of Domesday was requisite.<sup>81</sup> Mr. *Stubbs* says:

"It may be questioned whether the jurors of 1086 or those of 1198 had greater freedom and responsibility; but we look on the former as part of an institution then for the first time adapted to the administration of the English government, whilst the latter appear as part of a system, the disciplinary force of which had nearly completed its work: the plan adopted in the Assize of Arms and in the ordinance of the Saladin tithe is now applied to the assessment of real property; the principle of representation is gradually enlarging its sphere of work, and the process now used for the calculation will before long be

<sup>79</sup> Of 300 knights, each to receive three English shillings every day, and to serve for a year. The demand is said to have been unprecedented, considering either the greatness of the amount, £16,425, or the definiteness of the proposition. But it will be seen that the actual objection is on another

and a very distinct ground. 1 *Stubbs's Const. Hist.*, ch. 12, p. 509.

<sup>80</sup> *Id.*, pp. 509, 510.

<sup>81</sup> Even from this the justiciars did not shrink. Mr. *Stubbs* states the nature of the inquiry and the machinery used. 1 *Const. Hist.*, ch. 12, p. 510.

applied to the granting of the tax, and ultimately to the determination of its expenditure.<sup>82</sup>

14. *Of Hubert Walter's resignation in July, 1198, as chief justiciary; and of the laws ordained by his advice. His successor was Geoffrey Fitz-Peter. Of his course.*

Since Richard's second coronation, Hubert Walter had continued for four years to perform the duties of his office with firmness and moderation. "By his advice, weights and measures were regulated, and other laws against fraud were ordained." In July, 1198, Hubert's resignation of the office of chief justiciary was reluctantly accepted;<sup>83</sup> and Geoffrey Fitz-Peter became his successor (July 11). He began his career as minister by a severe forest visitation, in the conducting of which he reissued and enlarged the Assize of Woodstock. He also directed a new iter of the justices on nearly as large a scale as that of 1194.<sup>84</sup>

15. *Whether Richard had anything to do with the laws of Oleron, or did anything to improve maritime law. Of his death (April 6, 1199). He was a bad king.*

John Selden observes, that "the penal laws prescribed by King Richard the first, with regard to the management of his navy, greatly differed from the Imperial laws."<sup>85</sup>

After what is mentioned in ch. 11, § 17, as enacted by Henry II, in relation to right of property in cases of wreck, Dr. Lingard says, "and by Richard it was added, that if the owner perished, his sons

<sup>82</sup> Id., pp. 510, 511, the resignation of the chief justiciary took place a few days after the day fixed for the report; and the tax was not collected without difficulty. Id., p. 511.

<sup>83</sup> Foss's Biogr. Jurid.

<sup>84</sup> Stubbs's Const. Hist., ch. 12, p. 511. Observing that "the agenda of this 'iter' contain a direction for the elections of the nominators of the Great Assize to be made before the justices," Mr. Stubbs considers this "a proof that these functionaries were not now appointed by the sheriffs, but elected by the

suitors of the county court." He notices that "the Forest Assize also directs that the whole body of the suitors of that assembly shall attend at the sessions of the forest justices." Id., p. 511.

<sup>85</sup> Dissertation *ad Fletam*, ch. 9, § 2, p. 241, of Kelham's translation in 1771. He adds, "Neither can anything relating to those laws be found in the registers of the commanders of his fleet, a copy of which is preserved in the words of Roger Hoveden and Matthew Paris." *Id.*

and daughters, and in their default, his brothers and sisters, should have a claim in preference to the crown."<sup>86</sup> The *Jugemens d' Oleron* (or Laws of Oleron<sup>87</sup>) are supposed to have been compiled about the time of Richard I; but the honour of this collection is in dispute.<sup>88</sup>

Richard died the 6th of April, 1199, on the continent, "and was buried at Fonteverault, at his father's feet."<sup>89</sup> Mr. Turner speaks of this renowned prince as "affording to the world another example—how little, military ambition benefits a nation or blesses its possessor." "He added nothing to our civilization or prosperity. His best intellectual feature was his poetical tendency, of which he has left some memorials not uninteresting."<sup>90</sup> One lately writing the history of the English people has said of Richard:

"Destitute of his father's administrative genius, less ingenious in his political conceptions than John, Richard was far from being a mere soldier. A love of adventure, a pride in sheer physical strength, here and there a romantic generosity, jostled roughly with the craft, the unscrupulousness, the violence of his race; but he was at heart a statesman, cool and patient in the execution of his plans, as he was bold in their conception."<sup>91</sup>

Nevertheless Mr. Stubbs's language may properly be adopted in concluding a chapter as to Richard.

"He was a bad king: his great exploits, his military skill, his splendour and extravagance, his poetical tastes, his adventurous spirit, do not serve to cloak his entire want of sympathy, or even consideration, for his people."<sup>92</sup>

<sup>86</sup> 2 Lingard's Engl., ch. 6, p. 356; citing Leg. Sax. 313, 342 and Palgrave ii, lxxii.

<sup>87</sup> Published in the middle of the 17th century in Cleirac's work entitled *Les Us et Coutumes de la Mer*. Translated into English, and published in collection of Sea laws made in reign of Queen Anne. Printed in appendix to Peters' Adm., Dec., from copy in Sea Laws, 3 Kent's Com., 13, *note*.

<sup>88</sup> 4 Inst., 144; 1 Bl. Com., 419; 4

Id., 423; Molloy's *de jure maritimo*, book 2, ch. 5, p. 270, of 8th edi. (1744); 3 Kent's Com., 12; Hall. Mid. Ages, ch. 9, part 2, p. 278, of vol. 2, Phila. edi., 1824.

<sup>89</sup> 10 Harl. Miscel., p. 291, of edi. 1810.

<sup>90</sup> 1 Turner's Engl., ch. 10, p. 401 to 404; and p. 491, *note*, 115.

<sup>91</sup> 1 Green's Hist. of Engl. Peop., book 2, ch. 4, p. 185, of vol. 1.

<sup>92</sup> 1 Const. Hist., ch. 12, p. 512.

## CHAPTER XIII.

## INSTITUTIONS IN THE REIGN OF JOHN—1199 TO 1216.

*1. Of promises for and by John; his coronation May 27, 1199; his divorce from his queen, in 1201, and his marriage to Isabella of Angouleme; his coronation with her at Westminster in 1201, and at Canterbury in 1202. His interest in building London bridge. His countenancing the murder of his nephew; and placing his niece under confinement. Of his mother's death; and his dominions on the continent.*

Arthur, the son of John's elder (and deceased) brother, Geoffrey, was at one time contemplated by Richard as his successor;<sup>1</sup> but it is said that Richard, towards the close of his life, was more anxious to provide for his brother John.<sup>2</sup> While John was still in Normandy, some were trying to strengthen his position in England.<sup>3</sup>

"The archbishop, acting in conjunction with the justiciar and William Marshall, called together at Northampton all those of whom any apprehension was entertained, and made them the most ample promises on behalf of John: not a grievance, public or private, was to remain without redress."—Their "promises were accepted as sufficient security, and all the barons, including Earl David, of Huntingdon, the brother of the king of Scots, took the required oaths. In the meanwhile, John, having made good his hold in Normandy, crossed over to England for his coronation, which took place on the feast of the Ascension, May 27, 1199."<sup>4</sup>

Mr. Stubbs mentions the words ascribed by Matthew Paris to Hubert—"that the right to reign is confirmed by the election which

<sup>1</sup> Turner's Engl., ch. 11, p. 406, note 3.

<sup>3</sup> Foss's Biogr. Jurid.; 1 Stubbs's Const. Hist., ch. 12, p. 513.

<sup>2</sup> 1 Stubbs's Const. Hist., ch. 12, p. 513, and note 1.

<sup>4</sup> Id., p. 514.

the nation makes, after invoking the grace of the Holy Ghost;’ and says, “the archbishop, moreover, when he received the coronation oath, adjured” John, “in God’s behalf, that he would not take the honour to himself without a full purpose to keep his oath, and John replied that, by God’s help, in good faith, he would keep all that he had sworn.”

“The enunciation, however, of the elective character of the royal dignity is of importance, whether it be due to the archbishop or to the historian. The circumstances, too, of John’s accession recall forcibly those of William Rufus, when Lanfranc strove in vain to bind the conscience of the prince in whose exaltation he had so large a share. In more than one respect Hubert Walter played the part of Lanfranc to John.<sup>5</sup>

John, after a lapse of 12 years since his marriage to Hawisia (or Hadwisa, or Joanna), heiress to the earldom of Gloucester, obtained from the archbishop of Bordeaux a sentence of divorce, on the plea of consanguinity; and married Isabella, daughter of Aymer (or Americus) count of Angouleme. He was crowned with her at Westminster by the primate, October 8, (1201); and the next year the same ceremony was repeated at Canterbury, on the festival of Easter.<sup>6</sup>

John’s interest in the building of London bridge, is manifested by his order at Molineux on the 18th of April, in the third year of his reign. His interest in his nephew, Arthur of Bethany, appears in his order dated at Chinon, Aug. 24, 1202, soon after the capture of Mirabeau.<sup>7</sup> Subsequently he was present at Rouen on the very day wherein Prince Arthur is said to have disappeared from there.<sup>8</sup> “That he was murdered by the commands, if not by the hands of his uncle, was the belief of his contemporaries.”<sup>9</sup> Dr. Lingard says:

<sup>5</sup> Id., p. 515; 1 Mackintosh’s Engl., p. 169, of Phila. edi. 1830. The business of the coronation was followed by a ceremony which had been long delayed—the investiture of William Marshall, as earl of Pembroke, and Geoffrey Fitz-Peter, as earl of Essex. 1 Stubbs’s Const. Hist., ch. 12, p. 515; Foss’s Biogr. Jurid.

<sup>6</sup> 3 Lingard’s Engl., ch. 1, pp. 6, 7;

1 Stubbs’s Const. Hist., ch. 12, pp. 516, 517; Miss Strickland’s Queens of Engl., vol. 2, p. 31, of Phila. edi. 1857.

<sup>7</sup> Penny Magazine for 1845, Sept., p. 359.

<sup>8</sup> Hardy’s Close Rolls, p. 62, of edi. 1833.

<sup>9</sup> 1 Turner’s Engl., ch. 11, pp. 496, 497.

"Arthur was transferred to the castle of Rouen, and confined in a dungeon of the new tower. Within a few months he had disappeared. If the manner of his death could have borne investigation, John, for his own honour, would have made it public. His silence proves that the young prince was murdered. Report ascribed his fate to the dagger of his uncle; but the king of England could surely have hired an assassin, without actually dipping his hands in the blood of a nephew. His niece, Eleanor, the sister of Arthur, and commonly called the maid of Bretagne, was sent to England, and placed under rigorous but honorable confinement, that she might not, by marriage with a foreign prince, raise up a new competitor for the succession of her father."<sup>10</sup>

"In November, 1203, John returned to England, and left Normandy to its fate; he distrusted the barons, and they distrusted him."—John's mother ("Eleanor") died on the 1st of April, 1204; and the month of July saw Philip supreme in the whole of Normandy, Maine, Anjou and Touraine. John never again set foot in Normandy."<sup>11</sup>

2. *Geoffrey Fitz-Peter, earl of Essex, continued as chief justiciary. Hubert Walter, the archbishop of Canterbury, undertook the chancellorship. This regarded as proof that the office of chancellor was advancing. Of Hubert Walter's death, in 1205. To whom John then sold the chancery. Who was recommended by him for archbishop of Canterbury; and who was preferred by the pope.*

Geoffrey Fitz-Peter continued in the office of chief justiciary.<sup>12</sup> *Hubert Walter*, the archbishop who had placed the crown on John's head, undertook the chancellorship.<sup>13</sup> The "ordinance of the king concerning the fees of the Great Seal of England," is "under the hand of Hubert, archbishop of Canterbury, our chancellor at Northampton, on the 7th day of June, in the first year of our reign."<sup>14</sup> It was sneeringly observed to Hubert that, 'heretofore, chancellors have been created archbishops, but no archbishop before you, has vouch-

<sup>10</sup> Lingard's Engl., ch. 1, pp. 8, 9; Mackintosh's Engl., pp. 171, 172, of Phila. edi. 1830.

<sup>11</sup> Stubbs's Const. Hist., ch. 12, p. 518. Eleanor "was buried by the side of Henry II at Fontevraud." Miss Strickland's Queens of England, vol. 2, p. 35, Phila. edi. 1859.

<sup>12</sup> Trained in the school of Henry II, under Glanvill and Hubert Walter; he

"attained his earldom partly by a fortunate marriage, and partly by making the best of his opportunities as one of the king's counsellors." 1 Stubbs's Const. Hist., ch. 12, p. 524.

<sup>13</sup> Id., pp. 515, 516.

<sup>14</sup> (Fœd. 95). 1 Campbell's Lives of the Chancellors, ch. 6, p. 120, of edi. 1846; p. 117 of edi. 1874.



safed to become chancellor.' Mr. Foss regards this as merely proving "that the office of chancellor was then advancing in importance, and was rapidly treading on the heels of that of chief justiciary, which, in a few years, in reference to all political power, it entirely superseded."<sup>15</sup> Hubert may have seen that John would need both advice and restraint, which no one of inferior position or weaker character would be able to enforce. Not only for him, but also for Geoffrey Fitz-Peter, it may be said in excuse of retaining position under John so long, that it was probably, in part, from an impression that a resignation of office would cause it to fall into worse hands.

Hubert performed well the duties of the chancellorship.<sup>16</sup> By his death, (July, 1205,) John lost his wisest adviser. Soon *Walter de Grey* purchased the chancery for 5,000 marks;<sup>17</sup> and his uncle, *John de Grey*<sup>18</sup> (or Gray), was recommended for archbishop of Canterbury. Pope Innocent had objections to his appointment, and desired to discover a substitute likely to prove acceptable to the king.

"He persuaded himself that there was one, at that very time in Rome, Stephen Langton, an Englishman, whose merit had raised him to the rectorship of the university of Paris, and had induced

<sup>15</sup> Biogr. Jurid.

<sup>16</sup> Stubbs's Const. Hist., ch. 12, p. 516, and pp. 523, 524; Foss's Biogr. Jurid.

<sup>17</sup> To be paid by instalments of 500 pounds, at the feast of St. Andrew and Pentecost, in each year. The charter, confirming this grant, is dated Oct. 2, 1205 (7 John); his uncle (John de Grey) makes himself responsible on the roll for the payment of the fine. Foss's Biogr. Jurid.

<sup>18</sup> A native of Norfolk, about the year 1200, preferred to the arch-deaconry of Cleveland, which he exchanged for that of Gloucester. Though Sir T. Hardy has inserted his name among the keepers of the Great Seal, it is doubted whether he is entitled to any other designation than that of a mere officer, who affixed the seal for archbishop Hubert, the chancellor at the time. His erudition and his

wit, for both of which he was remarkable, soon made him a favorite with king John, who procured his election to the bishopric of Norwich, September 24, 1200. From the scene of contention that arose as to the archbishopric, *John de Grey* was removed by being sent as lord deputy to Ireland, where shortly after, in 1210, he aided king John (on his visit there) in the introduction of English laws. In 1214, in returning from an embassy to Rome, he became sick at Poitiers, and died there Nov. 1. His remains were brought to England and interred in his cathedral (at Norwich). Mr. Foss says, "He was a man of agreeable manners and sprightly conversation, well informed and intelligent, ready in counsel and energetic in action. He was fond of antiquarian studies, and the author of some historical and other works." Biogr. Jurid.

Innocent to invite him from Paris to the Papal court, and to create him cardinal of St. Chrysogonus. Nor was he unknown to John, who had corresponded with him and expressed a high esteem of his worth and acquirements. But the monarch would not hear of his promotion in the place of his favorite."<sup>19</sup>

3. *Of charters of cities and boroughs. William of Ely the king's treasurer. How far sheriffs were changed. Names of sheriffs, and of constables of castles.*

Charters of cities and boroughs were granted by John in 1199, and several succeeding years.<sup>20</sup> During the whole reign William of Ely, a canon of the church of Lincoln, was the king's treasurer.<sup>21</sup>

Sheriffs may have been changed to some extent;<sup>22</sup> yet the statement that most of them were either removed to other counties or dismissed altogether,<sup>23</sup> should, perhaps, not be taken literally. For it appears that *William de Braiosa*, who was a sheriff in the reigns of Hen. II and Ric. I, was, on John's accession continued in the office of sheriff of his county for some years."<sup>24</sup> *William Briwer* was sheriff of several counties, not only in Richard's reign, but in subsequent reigns.<sup>25</sup> After the death of Henry de Cornhill, in 4 or 5 Ric. I, *Reginald de Cornhill*, or his son of the same name, held the

<sup>19</sup> 3 Lingard's Engl., ch. 1, pp. 18, 19.

<sup>20</sup> Some are in Select Charters, p. 299 to 306.

<sup>21</sup> In 10 John (1208), he is mentioned in that character as a justicier before whom fines were acknowledged. In 8 Hen. III, Dugdale recording his death, calls him then 'Angliæ Thesaurius.' Foss's Biogr. Jurid; citing Rot. Chart. 49.

<sup>22</sup> *Hugh de Chaucomb*, who, in the last three years of Richard's reign, was sheriff of Staffordshire, held from 6 to 9 John the same office in Warwickshire and Leicestershire. Foss's Biogr. Jurid.

<sup>23</sup> 1 Stubbs's Const. Hist., ch. 12, p. 516.

<sup>24</sup> Foss's Biogr. Jurid. After having received favours from John, he was about the 9th or 10th year of his reign the subject of persecution. Whatever may have been the cause, the result was

the capture of his wife and their eldest son, William, whom King John, in 1210, barbarously commanded to be famished in their prison in Windsor castle. The baron himself escaped, in the habit of a beggar, into France, where he died about 1212, and was buried in the abbey of St. Victor, at Paris. Though he had been a bold and active soldier, he is said to have been of a pious and kindly disposition. Foss's Biogr. Jurid.

<sup>25</sup> The rolls also teem with grants of all kinds—of manors, lands, marshals, custodies, wardships, licenses for building castles, and of various other privileges, besides presents of wine, and on one occasion of a captured ship. In frequent attendance on king John, he accompanied him to Ireland, dined with him at his table, eating flesh on certain prohibited days, for which indulgence money was given to the poor; and ad-

sheriffalty of Kent, with some short interval, until 5 Hen. III.<sup>26</sup> *Simon de Pateshull* held the sheriffalty of Northampton, from 6 Ric. I to 5 John.<sup>27</sup> *Robert Fitz-Roger*, who became sheriff of Norfolk and Suffolk in 3 Ric. I, held the office at intervals till 14 John.<sup>28</sup> *Robert de Braybroc*, who in 10 Ric. I was sheriff of the counties of Bedford and Buckingham, under William de Albini, continued to hold this office, with an interval of two or three years, till 15 John. He was also sheriff of the county of Northampton from 10 to 15 John; and of Rutland from 12 to 15 John.<sup>29</sup> He was succeeded in the sheriffalties by his son, *Henry de Braybroc*, who, during the last two or three years of his father's life, had been united with him therein.<sup>30</sup> *Hugh Bardolph*, who, in Richard's reign, was entrusted with the sheriffalty of the counties of Northumberland, Dorset and Somerset, Stafford, Wilts and Leicester, continued under king John in some of these, with the addition of Derby, Nottingham, Devon and Cornwall.<sup>31</sup> During John's reign, *William Mareschall* (or Marshall) earl of Pembroke, was entrusted with the sheriffalties of Gloucestershire, Sussex and Surrey.<sup>32</sup> On the accession of king John, *Gerard de Camville* recovered his sheriffalty<sup>33</sup> (mentioned in ch. xii,

hering to him in all his troubles; he was a witness to a renunciation of his crown to the pope. In 15 John, he was made seneschal to the king in conjunction with W. de Cantalupe, and when the king marched northwards, in 1215, he was one of those entrusted with the command of some of the forces left to check the barons remaining in London. Foss's Biogr. Jurid.

<sup>26</sup> He succeeded his brother also in the management of the mint of England, and continued in connection with it and with the treasury till late in the reign of John. Id.

<sup>27</sup> Id.

<sup>28</sup> Id., King John granted him a charter of confirmation of his inheritance of the castle and manor of Warkworth, in Northumberland, of which county he held the sheriffalty from 3 to 14 John. Id.

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> In 1 John he was custos of the castle of Tickhill, and had a grant of the manor of Brumegrave-cum-Norton. Foss's Biogr. Jurid.

<sup>32</sup> And with the custody of the castles of Carmarthen, Cardigan and Goher. He seems to have been in attendance on the king, except when engaged in active services confided to him. In 1201 he was with the king in Normandy, and in 1209 in Ireland, where he was left as lord deputy. Id.

<sup>33</sup> Which he retained till the end of 7 John. And he received other proofs of the king's regard. When the kingdom was placed under interdict in 9 John, the king committed to him and to William de Cornhill all the lands and goods of the clergy in the diocese of Lincoln who refused to perform divine service (Cal. Rot. Pat. 3). Id.

§ 8, p. 225). To *James de Poterna*, who, in 1200, was under-sheriff of York (to Geoffrey Fitz-Peter), the county of Wilts was committed in 5 John.<sup>34</sup> In 6 and 7 John, Robert de 'Salceto (or *de la Saucy*) held the sheriffalty of Northamptonshire with Henry Fitz-Peter (or de Northampton).<sup>35</sup> In 7 John, and the two following years, *Thomas de Muleton* was sheriff of Lincolnshire.<sup>36</sup>

*Faukes de Breaute*, who, in 7 John, was sent with others to Poitou with 1,000 marks, was, in 10 John, sheriff of Glamorganshire.<sup>37</sup> At a later period the castles and sheriffalties of Oxford, Northampton, Bedford and Buckingham, and Huntingdon and Cambridge were entrusted to him.<sup>38</sup>

In 14 John, *John Fitz-Robert* was appointed to the sheriffalty of Norfolk and Suffolk, which he held for the next two years.<sup>39</sup> In 17 John, *Ralph de Hareng* (a justiciar in 10 John) was sheriff of the

<sup>34</sup> Id.

<sup>35</sup> Foss's Biogr. Jurid.

<sup>36</sup> For which appointment he paid a fine of 500 marks and five palfreys, Early in this reign he was married to the daughter of Richard Delfiet. On her death, he, without applying for the king's license, contracted a second marriage with Ada, the widow of *Richard de Luci* of Egremont, and daughter of Hugh de Moreville. His lands in Cumberland were seized therefor, and only restored on the payment of a large fine. Though for a time in disgrace, it appears that he accompanied the king to Ireland in 12 John, and was in employment with him in 14 John, and attested charters in this and the two following years. Having joined the party of the barons, he was taken prisoner with his son Alan in the castle of Rochester, and now he was imprisoned in the castle of Corff; and his own castle and other possessions were seized into the king's hands. Id.

<sup>37</sup> And was actively employed in the Welsh marches until 15 John. Then he was sent with the earl of Salisbury and others on a mission to Flanders, taking with them 10,000 marks. Zealously

supporting King John in the wars with his barons during the last years of his reign, he was one of the generals left to check them in London, when the king marched to the north in 1215. In the following November he took the castle of William Malduit, of Hamslope, and a few days afterwards that of Bedford. The king granted him the latter castle, and also gave him in marriage a rich but unwilling bride, Margaret, daughter of Warin Fitz-Gerald, and widow of Baldwin de Ripariis (or de Betun), earl of Albemarle, the son of William, earl of Devons, together with the wardship of her son, Baldwin, and the custody of his lands. Part of these were in South Lambeth, where he built a hall or mansion house, which was called by his name. Faukes was also appointed senechal to the king, and obtained a mandate for all constables to treat him hospitably when he came to their castles. Foss's Biogr. Jurid.

<sup>38</sup> Id.

<sup>39</sup> He then joined the insurgent barons; he was one of the twenty-five to whom was entrusted the enforcement of Magna Charta. Foss's Biogr. Jurid.

counties of Buckingham and Bedford; *Walter de Beauchamp* (Bella Campo) was entrusted with the sheriffalty of Worcestershire; and *Robert de Beauchamp* was sheriff of Oxfordshire and constable of the castle of Oxford.<sup>40</sup>

*Philip de Ulecot*, a northern knight of great power and possessions, was fined £100 and a complete horse, in the first year of John's reign, for his marriage with Johanna, the sister of the wife of Sewel Fitz-Henry; but part of this fine was subsequently remitted. In 5 John he was appointed constable of Chinon in Touraine; and it would seem that he was taken in battle; a very large sum (200 marks) was given for his redemption. In 14 John he had the office of forester of Northumberland, with a grant of several manors. To these was added the sheriffalty of that county, in conjunction with Earl Warren and the arch-deacon of Durham, who, with him, were also appointed custodes of the bishopric of Durham during its vacancy. The sheriffalty he afterwards held alone for the remainder of this reign.<sup>41</sup>

*Robert de Veteri Ponte*, whose ancestor of the same name (Vieuxpont, or Vipont) flourished in the Conqueror's reign, was in continual attendance on John during a large portion of his reign, and rendered services, of which that king shewed his appreciation by a grant in 4 John of the castles of Appleby and Burgh, with the barony of the former, including divers manors and castles, among which was Brougham Castle; and afterwards the sheriffwick of the county of Westmoreland, and the bailiwick of Rouen. In 5 John was committed to him the castle of Bowes, in Richmondshire, and the bailiwick of Caen, in Normandy. In the following year he was appointed constable of Nottingham castle, with the sheriffalty of that county and of Derby, in which he continued till 11 John. During the remainder of this reign he had other responsible and important trusts, among which

<sup>40</sup> Foss's Biogr. Jurid. The manor and park of Woodstock were also committed to his, Robert's charge. *Id.*

<sup>41</sup> And the first four years of the reign of Henry III. In 1216, King John having constituted him and Hugo de

Baliol, governors of all the country to the north of the Tees, they stoutly defended the castles committed to their charge from the attacks made upon them by the King of Scots in behalf of Louis of France. Foss's Biogr. Jurid.

were from 12 to 17 John the sheriffalty of Devonshire, and from 12 to 15 John that of Wiltshire.<sup>42</sup>

There is in 9 John a curious entry, authorizing the constable of Winchester castle to permit John de Bianney, a knight whom he had in custody, to go out of his prison twice a day or more, '*ad esker-miandum*,' so that he retained *Oliver de Vaux* in his place till his return, when Oliver might be discharged. A caution, however, is given to the constable, as he loves his goods and his body, to keep Jordan safe.<sup>43</sup>

4. *Of the justices, in the reign of Richard, a considerable number acted in that of John. Names of justices. Order that persons charged with homicide be kept in jail until after trial.*

There is no reason to doubt of there being a sufficient number of justices. For of those in office, in the reign of Richard, a considerable number acted in that of John.<sup>44</sup> And in almost every year there were additional appointments of justices.<sup>45</sup>

<sup>42</sup>In 17 John, he was entrusted with the custody of the castles of Carlisle and Durham, together with the county of Cumberland and all the manors on the Tyne and the Tees; and with Brian de Insula and Geoffrey de Luci, was appointed the king's lieutenant of all the castles and other royal possessions in Yorkshire.—*Id.*

<sup>43</sup>Foss's Biogr. Jurid., tit. Oliver de Vaux. In 12 John, Oliver accompanied the king to Ireland, but afterwards joining the barons against the king, Oliver's possessions were seized and distributed among the adherents to the royal cause. *Id.*

<sup>44</sup>In the reigns of Hen. II, Rich. I and John, the scutage of *Hugh Bardolf*, in the several counties of Warwick, Leicester, Kent, Oxford, Norfolk and Suffolk, where his property lay, was excused '*pro libertate sedendi ad Scaccarium*;' and, in John's reign, he continued to act on the circuits as a justice itinerant—as well as in the Curia Regis

as a justicier before whom fines were levied—till the 5th year.

"About that time he died, as, in the next year, Amabilis de Limesey, who was his wife, fined in 2,000 marks and five palfreys that she should not be compelled to marry again, and that she should be quit of all aids to the sheriff, and as long as she should be a widow, after the death of John de Braiosa, her late husband (*Rot. de Fin.* 82). This seems to shew that soon after the death of Hugh Bardolf she had married a second husband, who had since died: it appears that in the previous year William de Braiosa had given a fine to have her for the wife of one of his sons (*Dugdale's Baron.* i, 415)." Foss's Biogr. Jurid.

*Osborne Fitz-Hervey* appears as a justicier of the king's court at Westminster for twenty-five years, viz: from 28 Hen. II, 1182, till 7 John (1205-6); in almost every year of which he was present when fines were levied there, and frequently

From Woodstock, on November 8th, in 9 John, was the fol-

he performed the duties of a justice itinerant. Joceline de Brakelonda records that he was sub-sheriff of Norfolk and Suffolk. He married Dyonisia, daughter of Geoffrey de Grey, and died in April 1206, leaving an only son, Adam, who married Juliana, the daughter of the justicier, John Fitz-Hugh. *Id.*

*Simon de Pateshull*, from 5 Ric. I, till the end of John's reign, performed the duties of a justicier, besides acting as a justice of the Jews (Madox i, 235; ii, 315). After mentioning that his position, during the principal part of John's reign, was evidently very high, Mr. Foss remarks, that "from the fact that many of the mandates in causes before the court are addressed '*Rex Sim. de Pateshull, et sociis suis, justiciis suis*,' an inference may perhaps be drawn that he was at the head of that division of the Curia Regis in which 'Common Pleas' were tried." It is supposed that he died before March, 1216. *Id.*

From 9 Ric. I, till the end of John's reign, *James de Poterna* acted as a justicier, and on various itinera. On one occasion, for granting leave to settle a cause without the king's license, he and Simon de Pateshull incurred each a fine of 100 marks, which, however, was afterwards remitted. *Id.*

*Richard de Heriet*, who was sheriff of Essex and Hertfordshire, in 4 Ric. I, acted from 6 Ric. I to 6 John as a justicier in the Curia Regis at Westminster. He died in 1208. *Id.*

*Walter de Crepping*, one of the justices itinerant, who set the tallage on Essex in 8 Ric. I, and was soon after raised to the bench at Westminster, appears in many fines levied during the first eleven years of John's reign, and he is named in a record of 13 John (Madox i, 704; Abb. Placit. 82). *Id.*

*Richard Flandrensis* (or Le Fleming) was one of the justiciers before whom fines were levied at Westminster in the last year of Richard's reign, and the first three years of that of John. In 3 John, and the two following years, he held the sheriffalty of Cornwall, and was connected with the receipt of the king's revenue in Devonshire. *Id.*

*Godfrey de Insula* appears among the justiciers before whom fines were levied, from 10 Ric. I to 10 John, and as a judge in the rolls of the Curia Regis in 13 John. *Id.*

*Ralph de Welleford* was in 9 Ric. I, and 1 John, among the justiciers before whom fines were levied; and, in 3 John, was one of the justiciers itinerant into Gloucestershire. He is mentioned as one of the pledges for the fine which Alicia, countess of Warwick, agreed to pay for her widowhood, to the extent of £200. *Id.*

*Stephen de Turnham*, who, in the last two years of Richard's reign, appears on fines levied in the Curia Regis, and as a justice itinerant in the counties of Essex, Hertford and Surrey, was, during the first four years of John's reign, engaged in the same duties. He died in 16 John, in which year his widow paid sixty marks and a palfrey for liberty to marry with whom she pleased.

*Richard Barre*, who, in 7 Ric. I, was one of the justices itinerant in Devonshire, appears from that year, till 1 John inclusive, among the justices taking fines in the Curia Regis. *Id.*

Before *Robert Fitz-Roger*, who was in the Curia Regis in 3 Ric. I, and a justice itinerant in 1197 and 1198, fines were levied in 3 John. He died in 14 John. *Id.*

*Reginald de Argentine*, who, in 1193, had been a justice itinerant in Essex and Hertfordshire, was, in 3 and 4 John, pre-

lowing order from "the king to all his justices and faithful people":

sent in the court at Westminster. *Id.*

*Roger Arundel*, who, in 1 Ric. I, had been a justice itinerant in *Yorkshire*, with *Hugh Purser* (bishop of Durham) and others, and, in 9 Ric. I, performed a like duty in northern counties, was a justicier in 4, and also in 8 John. *Id.*

*Henry de Northampton*, who acted as a justice itinerant in 1 Ric. I, had fines levied before him in 4 John and 10 John as a justicier, both at Westminster and in the country. *Id.*

<sup>45</sup> In 1 John, and during the whole of this reign, *Eustace de Fauconbridge*. He was employed in 1204 upon an embassy to France. Foss's Biogr. Jurid.

In 1 John, *William de Faleise*. He held a high and responsible office in the treasury. For the first nine years of John's reign he was the custos of the honor of Gloucester; at a later period he and *Maurice de Tureville* had the custody of Winchester castle. He died in 1232. *Id.*

In 1 John, *Henry, of London* (arch-deacon of Stafford), was one of the justices itinerant who fixed the tallage in Berkshire, and a justicier before whom fines were levied. In 3 John he went on an embassy to the king of Navarre (*Rot. Pat.* 3); and, in 5 John, on another to the king of Connaught (*Rot. de Liberate* 83). After his return to England he resumed his duties as one of the regular justiciars (*Rot. de Fin.* 306, 398, 401), and had various ecclesiastical preferments, terminating in March, 1213, with the arch-bishopric of Dublin. *Id.*

*Henry de Wichinton*, a justicier in the first three years of this reign. *Id.*

1 and 8 John, *Robert de Braybroc* appears among the justiciars before whom fines were acknowledged.

1 to 10 John, *Reginald de Cornhill* is present at fines. *Id.*

2 John (and also 3 John), *Ralph Morin*

was a justicier in the country where fines were levied. In the first of these years he was appointed sheriff of Devonshire. *Id.*

2 and 3 John, *Stephen de Clay*, a justicier before whom fines were levied. *Id.*

2 to 8 John, *John de Grey* (or Gray), bishop of Norwich, and *Ralph de Stoke*, justiciars at Westminster, and on the circuits. *Id.*

3 John, *Richard Malebyssc* was a justice itinerant to fix the tallage in Yorkshire; in 4 John, he was present at Westminster, where fines were acknowledged. He died in 11 John (1209). *Id.*

3 and 4 John, *Reginald de Argentine* a justicier before whom fines were levied. Foss's Biogr. Jurid.

4 and 10 John, *Alexander de Poynton* acted both at Westminster and in the country. *Id.*

5 John, *Josceline de Wells*, a justicier at Westminster and in the country. At a later period he was bishop of Bath and Wells. *Id.*

*Hugh de Chaucomb*, who, in 2 John, was a justicier in Normandy, was, in 5 John, one of the justiciars before whom fines were acknowledged in Hampshire and Nottinghamshire. *Id.*

5 to 10 John, *William de Cantilupe*, a justicier before whom fines were acknowledged. In 3 John he was steward of the household; in the following year, sheriff of Worcestershire, Warwick and Leicester, and Hereford; over one or the other of these counties he presided for many years. *Id.*

6 John, *Robert Marmion*, a justicier before whom fines were levied in the country. *Id.*

*Richard de Mucegros*, a justicier for six years, in one of which (9 John) he was sheriff of Gloucestershire. *Id.*

8 John, *Peter de Rupibus*, a Poitevin



"We strictly prohibit any one charged with homicide from being

by birth, who, in the reigns of Hen. II and Ric. I, was a clerk in the king's chamber; and, in that of the former, held the rectory of Dartford, in Kent. In 1 John he is called '*clericus noster*,' and mentioned as prior of Loches. In 3 John he was treasurer of Poitiers, and arch-deacon of the church there. About the same time he was raised to the dignities of arch-deacon of Stafford, and precentor of Lincoln, and soon after was elevated to the episcopal bench, being consecrated bishop of Winchester, at Rome, Sept. 5, 1205. Roger de Wendover (iii, 181), in announcing his election, calls him '*vir equestris ordinis et in rebus bellicosis eruditus*.' The king, on this occasion, presented him with 2,000 marks (Madox i, 388). He was in continual attendance on the king in his progresses throughout the kingdom, and, throughout the king's difficulties, acted as one of his counsellors. In 1208 fines were levied before him in the king's court. *Id.*

8 John, *Walter de Bovington*, *Roger de Huntingfield*, *Robert de Velere Ponte*, *Humfrey*, arch-deacon of *Sarum*, *Richard de Seinges* and *Henry Fitz-Ailwyn* were justiciers before whom fines were levied. The latter was mayor of London from 1189 till his death, in 14 John. *Id.*

8 John, *Simon de Kyme*, one of the justiciers sent to Lincoln to clear the jail there, and to hear an appeal. *Id.*

9 to 16 John, *Henry Ponte Audomare*, a justicier at Westminster, and in the country. *Id.*

10 John, *William de Cornhill*, a justicier in fines levied. He was consecrated bishop of Coventry and Litchfield Jan. 1215 (17 John). *Id.*

10 John, *William de Ely*, a justicier in fines. He was treasurer during the whole reign. *Id.*

10 John, *Robert de Percy*, *Henry Fitz-Hervey* and *John Fitz-Hugh*, justiciers in fines. The latter is noticed as constable of Windsor castle, and in custody of it throughout the reign. In 10 and 12 John he held the sheriffalty of Sussex, and during the three following years that of Surrey. *Id.*

10 John, *Ralph Hareing*, a justicier. In 17 John he was sheriff of the counties of Buckingham and Bedford; in the next year he was employed on a mission. *Id.*

10 John, *Roger de Lacy*, a justicier. After 1204 he was sheriff of the counties of York and Cumberland, with the custody of their castles. He had a high place in the king's confidence, and was on terms of familiarity with him. *Id.*

10 John, *Robert Malduit*, a justicier. In 1 John he obtained the custody of Rockingham castle. He was, from 2 to 7 John, sheriff of Rutland, and, during the whole reign, was chamberlain of the Exchequer. *Id.*

10 John, *William de Wrotham*, a justicier in this and some previous years. In the early part of this reign he was sheriff of Devonshire. *Id.*

10 John, *William*, arch-deacon of Hereford, and *Adam de Port*, justiciers in fines. On June 25, 1213 (15 John), the custody of the castle of Southampton was committed to the latter, but before the 25th of the following month he died. *Id.*

10 and 11 John, *William de Camville*, *William Furnellis* (or Furnaas) and *William de Huntingfield*, justices itinerant at Cambridge. The last named was appointed constable of Dover castle in 5 John; and, from 11 to 15 John, held the sheriffalty of the counties of Norfolk and Suffolk. The first named died in 16 John. Thereafter his wife, Nicola, held the sheriffalty of Lincolnshire, and was

bailed, or committed to custody, or placed in hostage, unless by our special command, but to be safely kept in jail until after his trial before our justices."<sup>46</sup>

5. *Sir Robert Cotton supposes that the commons were admitted, and their counsels used in the 6th year of John's reign. This, noticed in connection with grounds of complaint of the barons against John, accumulating from 1200 to 1213. In 1213 is the first occasion on which Mr. Stubbs finds proof that representatives were summoned to a national council. What was done with the seal when Walter de Grey, the chancellor, departed in October, 1213; and how, in his absence, Peter de Rupibus was chancellor.*

In an article upon "the antiquity and dignity of parliaments," Sir Robert Cotton says of John:

"Before this king's time, then, we seek in vain for any commons called; they were ever called for making laws, but not to consult touching war or peace; he first, as may be gathered (though darkly by the records), used their counsels and assents in the *sixth* year of his reign."<sup>47</sup>

According to Dr. Lingard, "The most ancient writ summoning the representatives of the counties to parliament, is dated in the *15th* year of John, 1213."<sup>48</sup>

governess of the castles of Frampton and Lincoln, the latter of which she defended against the confederated barons. She died about 15 Hen. III. *Id.*

10 and 15 John, *Abbott of Ramsey*, a justicier. *Id.*

10 and 11 John, *John de Briwes*, a justicier. *Id.*

11 to 16 John, *Roger Huscarl*, a justicier. *Id.*

13, 14 and 15 John, *Saherus de Quincy* (earl of Winchester), a justicier. *Id.*

15 and 16 John, *Josceline de Stivelhel*, who was sheriff of Huntingdonshire and of Cambridgeshire in 8 and 9 John, and in the latter year paid 20 marks, to be released from the employment, was now (15 and 16 John) a justicier. *Id.*

<sup>46</sup> Penny Magazine for 1845, Sept., p. 359.

<sup>47</sup> "Here is the first summons on record to the peers or barons: *tractatur de magnis et arduis negotiis*: it was about a war of defence against the French, and at that time the commons were admitted. At this time that may fitly be gathered by this ordinance, *provisum est communi assensu archiepiscoporum commanum, baronium, et omnium fidelium nostrorum Angliæ quod novem milites per Angliam inveniend. de communi re.*" Paris 6, Ro. II; in Dorso; cited by Sir Robert Cotton in his article printed in 1679, and reprinted in Harl. Miscel., vol. 8, p. 217, of edi. 1810.

<sup>48</sup> 3 Lingard's Engl., ch. 2, p. 165.

It is observed of the barons that "their grounds of complaint had been accumulating. They had been shamelessly taxed; the carucage had been, in John's first year, raised from two to three shillings on the carucate; the scutage, from a pound to two marks on the knights' fee: year after year the scutage had been taken as a matter of course, and when Geoffrey of York had raised his voice against the imposition of the carucage, he had been summarily silenced. In 1203, the king had exacted a seventh of the moveable property of his barons; in 1204, he had taken an aid from the knights; in 1207, a thirteenth of moveables from the whole country.<sup>49</sup> In this last case Archbishop Geoffrey, of York, following the example of S. Thomas<sup>50</sup> and S. Hugh,<sup>51</sup> resisted the demand when it was laid before the council; the clergy refused to give, but the king exacted their tax notwithstanding, and sent their champion into exile.<sup>52</sup> Again and again he had demanded the military service of the barons, and each time he had shown his distrust and cowardice. In 1201, the forces assembled at Portsmouth were allowed to return home on payment of money to the king; in 1202 and 1203, when they reached Normandy, they found the king unwilling to fight, and having returned home in disgust, found themselves obliged to redeem their desertion by enormous fines. In 1205, he had brought another great host together at Portsmouth, and had even pretended to sail for France; but he had gone no further than Wareham, and on his return had accepted money and dismissed the army. The barons were not without the military pride natural to a warlike race; they despised the king who dared not lead them; they hated him for his mistrust of them; they looked with disgust on" his "mean trickery."<sup>53</sup>

In 1213, John "made his submission to the pope, accepted" Stephen "Langton as archbishop" (of Canterbury), "undertook to repay the money exacted from the churches, and as a crowning

<sup>49</sup> Select Charters, p. 274 to 276.

<sup>50</sup> 1 Stubbs's Const. Hist., ch. 12, p. 462.

<sup>51</sup> In 1198. See ch. xii, § 13, p. 231.

<sup>52</sup> Soon after the death of Richard, Geoffrey fell under the displeasure of King John, the principal cause of which was his refusal to permit the carucage which had been generally granted to the king, throughout the rest of England, to be collected in his province. The immediate effect of this was the seizure of all his manors and other possessions; and though the archbishop did not hesitate to punish *James de Poterna*, the sheriff, and all others engaged in it, with those who had excited the king's anger

against him, he succeeded in effecting a reconciliation with the monarch, which lasted for several years. In 1207, however, he resisted the payment of the thirteenth penny which the king had imposed, and found it necessary to retire privately from England in order to avoid the royal resentment. In this exile he continued nearly seven years, and at last died at Gromont, in Normandy, on December 18, 1213." Mr. Foss esteems "the character he must ever hold in history as a valiant soldier, an able commander, a wise counsellor and an excellent son." Biogr. Jurid.

<sup>53</sup> 1 Stubbs's Const. Hist., ch. 12, p. 523.

humiliation, surrendered his kingdom to the See of Rome, receiving it again as a papal vassal, subject to tribute, and swearing fealty and promising liege homage to the pope. The pacification was arranged on the 15th of May."<sup>54</sup> John's proposal to the barons (to serve in France), which had been made before—was again met by a refusal after—he was absolved from excommunication. This time the northern barons declared that their tenure did not compel them to serve abroad, and that they would not follow the king.

They "had already begun to show that propension towards political liberty and self-government which marks them during later history; for they were the forefathers of that great north country party which fought the battle of the constitution during the 14th and 15th centuries."—John "advanced to Durham by way of a demonstration, but returned (without doing anything) in as great haste as he had gone. On the 3d of October, he completed his transactions with the pope by doing homage to the legate Nicholas, at London."<sup>55</sup>

Whilst John was thus employed, the justiciar and archbishop held a series of very important meetings—a council at St. Albans' on the 4th of August, and another at St. Paul's on the 25th of that month. The former meeting is the first occasion on which we find any historical proof that representatives were summoned to a national council; the attendance was not only by the bishops and barons, but by a body of representatives from the townships on the royal demesne, each of which sent its reeve and four legal men. The justiciar laid before the whole body a recent promise, by the king, of good government; he issued an edict forbidding illegal exactions, and referred to the laws of Henry I as the standard of good customs to be restored. As to what those laws were, 'the archbishop took care that they should soon be informed.' Henry's charter was produced at the council on the 25th. It was thought to furnish both a safe standing ground and a precedent for a deliberate scheme of

<sup>54</sup> 1 Turner's Engl., ch. 11, p. 410 to 416, of ed. 1825; 3 Lingard's Engl., ch. 1, p. 32, *et seq.*; 1 Mackintosh's Engl., p. 175 to 178, of Phila. ed. 1830; Foss's Biogr. Jurid.; Stubbs's Select Charters, p. 276 to 278, ed. 1870; Green's Hist. of Engl. Peop., book 3,

ch. 1, p. 230 to 236, of ed. 1879. The language in the text is from 1 Stubbs's Const. Hist., ch. 12, p. 522.

<sup>55</sup> 1 Stubbs's Const. Hist., ch. 12, pp. 525, 526; Green's Hist. of Engl. Peop., book 3, ch. 1, p. 237, of vol. 1.

reform. The justiciar laid before the king the claims of the council, and died soon after—on the 2d of October.<sup>56</sup> Although the reeve and four men may have been called upon merely to give evidence as to the value of the royal lands, yet, as Mr. *Stubbs* observes, “the fact that so much besides was discussed at the time; and that some important measures, touching the people at large, flowed directly from the action of the council, gives to their appearance there a great significance.”<sup>57</sup> There is also this further significant fact—that the king, on the 7th of November, summoned a council at Oxford, to which, besides the armed force of the knights, each sheriff is directed to send four discreet knights from his county, to discuss with the king the business of the country.<sup>58</sup>

During the absence of *Walter de Grey*,<sup>59</sup> the chancellor, on a mission to Flanders (in the fall of 1213) which probably lasted longer

<sup>56</sup>Select Charters, pp. 278, 279; 1 *Stubbs's Const. Hist. of Engl.*, pp. 526, 527. It is said that the king hated, but feared him, and upon his death exclaimed, ‘*Per pedes Domini nunc primo sum rex et dominus Angliæ.*’ After the death of this great man, the national struggle for liberty under the barons soon began.

<sup>57</sup>Id. “To the first representative assembly on record is submitted the first draft of the reforms, afterwards embodied in the charter; the action of this council is the first hesitating and tentative step towards that great act in which church, baronage and people made their constitutional compact with the king, and their first sensible realization of their corporate unity and the unity of their rights and interests.” Id. 527; *Green's Hist. of Eng. Peop.*, book 3, ch. 1, vol. 1, pp. 237, 238, 239.

<sup>58</sup>Select Charters, pp. 278, 279; 1 *Stubbs's Const. Hist. of Engl.*, p. 528. “The four legal men of the demesne townships are replaced by the four discreet men of the shire; the very words ‘*ad loquendum nobiscum de negotiis regni nostri,*’ are an omen of the institu-

tion of representative parliaments.” Id. 528.

<sup>59</sup>Upon his purchase of the chancery, various ecclesiastical preferments were presented to him; in May, 1207, he was made arch-deacon of Totnes, with the prebend in the church of Exeter. Something was done in 1210, or 1213, towards electing him bishop of Lichfield and Coventry; but there seems to have been no valid election. Though he was chancellor at the time, he is not mentioned as having placed the seal to the charter of May 15, 1213 (14 John), by which the king resigned the crown to the pope. Previous to departing in October, 1213, on his mission to Flanders, he sent the Great Seal to the king, but still remained chancellor, and is so styled four days after. (*Rot. Claus.* i, 153; *Rot. Pat.* 105.) *Richard de Marisco* may have been employed to convey the seal to the king, and may have delivered it Oct. 9, 1213, to the king at Ospringe, but it was afterwards delivered to *Ralph de Neville*, to be held under the bishop of Winchester, ‘*Peter de Rupibus.*’ *Foss's Biogr. Jurid.*

than was expected, the king appointed to the chancellorship *Peter de Rupibus*<sup>60</sup> (mentioned in p. 244, *n.*), then bishop of Winchester. He retired from it on the return of Walter de Grey, who resumed the title on or before January 12, 1214.<sup>61</sup>

6. *Peter de Rupibus appointed justiciary in 1214, when the king was going abroad. The resolution taken (during the king's absence) by the northern barons as to restoration of laws and liberties and confirmation by a sealed charter. The crisis accelerated. Walter de Grey resigned the office of chancellor and was succeeded by Richard de Marisco. John's steps to divide his enemies unavailing. After a truce expired, the army of the barons marched; and articles were presented to John. When, where and how Magna Carta was executed.*

In 1214 (February 1), while the king was at Portsmouth, ready to embark for Poitou, he appointed *Peter de Rupibus* justiciary of England to act in his place and keep the peace during his absence.<sup>62</sup> During the king's absence, the northern barons met, on pretence of pilgrimage, at St. Edmund's, and there swore that if the king delayed any longer to restore the laws and liberties, they would withdraw their allegiance, and would make war upon him until he should confirm the concession by a sealed charter.<sup>63</sup> On his return he called them to account for not accompanying him, and accelerated the crisis by demanding a scutage, which the barons refused to grant.<sup>64</sup>

*Walter de Grey* probably resigned the office of chancellor between the 5th and 29th of October, 1214; the latter being the date of the

<sup>60</sup> He is designated as chancellor in two records, dated Nov. 21 and 24, 1213. (Rot. de Fin. 507-9.) The seal was delivered to *Ralph de Neville* on Dec. 22, to be held under him. Foss's Biogr. Jurid.

<sup>61</sup> And afterwards is not mentioned without that designation until July 7, 1214, although in the interval he had been again abroad. He was elected bishop of Worcester during this second absence, and was consecrated Oct. 5, 1214. *Id.*

<sup>62</sup> In this character fines were levied before him at Westminster in 15 and 16 John, and there are mandates of his dated as late as Oct. 20, 1214. Foss's Biogr. Jurid.

<sup>63</sup> 1 Stubbs's Const. Hist., ch. 12, p. 528. "The propositions were to be laid before him immediately after Christmas; in the meantime a force was to be raised sufficient to begin, if not to decide, the struggle." *Id.*

<sup>64</sup> *Id.*

first record in which his successor, *Richard de Marisco*,<sup>65</sup> is so denominated.

To detach the clergy from the barons, John issued a charter<sup>66</sup> which failed of its purpose. At the Temple, on the feast of the Epiphany, he received (January 6, 1215) a deputation from the barons, heard their demands, and made a request for a truce until the first Sunday after Easter, which was agreed to. His steps during the truce were as unavailing as those before it: the barons, having collected an army at Stamford, marched, as soon as the truce expired (27th of April), to Brackley, in Northamptonshire. From Oxford the king sent to the barons to know what were the laws and liberties they asked for.<sup>67</sup> After some further steps<sup>68</sup> a meeting was agreed to for the 9th of June, but postponed to the 15th, when the barons presented articles.<sup>69</sup>

<sup>65</sup> He held a subordinate office in the Exchequer in 8 Ric. I, and is mentioned in 9 John as a clerk in the chamber of the Exchequer. Numerous entries shew his frequent attendance on the king. He received the ecclesiastical preferments with which clerks of the court were usually rewarded; among which were prebends in Ely and York, and the archdeaconries of Northumberland and Richmond, besides several livings. In 1212 he was appointed sheriff of Dorset and Somerset, and had a royal present of one of three ships which had been captured. In 14 John he was one of the justiciars before whom fines were levied at Winchester. He continued in the office of chancellor from the time of his appointment to it until the end of the reign. Id.

<sup>66</sup> *Curia Regis, Johannis' Anno regni xxi, A. D. MCC. XIV*, p. 5 of Stat. of the Realm, ed. 1810; Stubbs's *Select Charters*, p. 279 to 281; 3 Lingard's *Engl.*, ch. 1, pp. 44, 45.

<sup>67</sup> 3 Lingard's *Engl.*, ch. 1, p. 46, *et seq.*; *Select Charters*, p. 281 to 287; Foss's *Biogr. Jurid.*; 1 Stubbs's *Const. Hist.*, pp. 529, 530.

<sup>68</sup> The barons had (May 5th) at Reading or at Wallingford renounced their allegiance to John, and begun to attack the royal castles. The king proposed (May 10) an arbitration to be made by the pope and eight persons, four chosen by himself and four by the barons. The barons proceeded by way of Northampton, Bedford and Ware to London, where they were received on the 24th of May with a hearty welcome. The adhesion of the Londoners was followed by a great defection from the king's party. Nearly all the members of the court and household obeyed the summons addressed to them by the confederacy, and left John without any power of resistance. Id., p. 530; *Select Charters*, pp. 281, 282.

<sup>69</sup> Mr. Stubbs observes that the great charter, although drawn up in the form of a royal grant, was really a treaty between the king and his subjects; it was framed upon a series of articles drawn up by them. 1 *Const. Hist. of Engl.*, p. 530. *Articuli Magne Carte libertatum sub sigillo Regis Johannis*, A. D. MCC. XV, are in the collection of 1810, p. 6 to

Mr. Turner, after mentioning that the king had "sent to desire a place of friendly conference to be appointed," and that the barons "named Runnymede, a meadow between Staines and Windsor," states that "*on the 15th June, 1215*, both parties met there," "they took their separate stations and a long discussion was terminated by the signature of" MAGNA CHARTA.<sup>70</sup> Sir. James Mackintosh, after mentioning that on the 15th of June both parties advanced to Runnymede, states that they "opened conferences which were *not concluded till Friday, the 19th of June, 1215.*"<sup>71</sup> This is a *mistake*. Mr. Green is right in saying, "the Great Charter was discussed and agreed to in a single day," but there is a mistake in saying the delegates of the king and barons "met on the 15th of *July.*"<sup>72</sup>

John "set his seal to the articles proposed by the barons, and issued the Great Charter of liberties, on the *15th of June*, at Runnymede."<sup>73</sup>

The place, whether on a bank of the Thames or on an island between its banks, is known by the name of Runnymede. The

8, and in Mr. Stubbs's volume of Select Charters, p. 282 to 287. Between pages 6 and 7 of the former are *Articuli Magne Carte Johannis: in Mus. Brit. asservati*; and between pages 8 and 9 is *Magna Carta, 17 Johannis, in Archivis Eccl. Cathed. Lincoln asservata*.

<sup>70</sup> I Turner's Engl., ch. 11, p. 420, of edi. 1825. Mr. Green's first statement as to the place is in his Short Hist., ch. 3, § 3, pp. 152, 153. More recently he has said, John "called the barons to a conference on an island in the Thames, between Windsor and Staines, near a marshy meadow by the river side, the meadow of Runnymede. The king encamped on one bank of the river, the barons covered the flat of Runnymede on the other. Their delegates met on the 15th of July on the island between them." I Green's Hist. of Engl. Peop., book 3, ch. 1, p. 244, of edi. 1879.

<sup>71</sup> I Mackintosh's Engl., p. 184, of

Phila. edi. 1830.

<sup>72</sup> I Green's Hist. of Engl. Peop., book 3, ch. 1, p. 244, of edi. 1879.

<sup>73</sup> I Stubbs's Const. Hist., ch. 12, p. 530. Magna Carta Regis, Johannis xv die Junii, anno regni xvii, A. D. MCC. XV," is in Latin in 1 Stat. of the Realm., edi. 1810, p. 9 to 13; and in Mr. Stubbs's volume of Select Charters, p. 288 to 298. There is an English translation in Taylor's Book of Rights, p. 20 to 34. Mr. Green, in a passage, wherein he mentions that "copies of it" (the Great Charter) "were made and sent for preservation to the cathedrals and churches," states that "one copy may still be seen in the British Museum, injured by age and fire, but with the royal seal still hanging from the brown, shrivelled parchment." Short Hist., ch. 3, § 3, p. 153; Hist. of Engl. Peop., book 3, ch. 1, p. 244, of vol. 1.



assembly from which the Great Charter emanated is in a writ in 28 Hen. III, styled '*Parliamentum Runnimeðæ*.'<sup>74</sup>

7. *Observations on Magna Carta. To whom it is addressed; by whose advice it is granted; the number of its clauses and the nature of the most important. Of the barons who thereby imposed limits on tyranny.*

"The more we contemplate this important charter, the more we shall perceive it to have been pregnant with benefits to every order of the community except that unfortunate class, who, being in a servile state, were considered to be the property of their happier masters, and are therefore not noticed in the palladium of the rights and privileges of the free."<sup>75</sup>

This language of Mr. Turner precedes his 'Analysis of Magna Charta.'<sup>76</sup> Among the observations upon the Great Charter,<sup>77</sup> those of Mr. Stubbs deserve particular notice.

"He says of Magna Carta: "It is based on the charter of Henry I; it follows the arrangement of that famous document, and it amplifies and expands it, so as to bring under the principles, which were for the first time laid down in A. D. 1100, all the particular rights, claims and duties which had come into existence during the developments of the intervening century."<sup>78</sup>

Those to whom this document is addressed by the king<sup>79</sup> are to know therefrom that for amendment of the kingdom, the king, by advice of those whom he names,<sup>80</sup> and others, his liegemen, has

<sup>74</sup> Taylor's Book of Rights, pp. 6, 7, of Lond. edi. 1833. Runney-Mead, in Surrey county, is "a hamlet in the parish of Egham, situated between Egham and the Thames," and is distant from Egham 1 mile, Staines 2, Windsor 5, and London 18 miles. 7 Dugdale's Engl. & Wales, p. 1354.

<sup>75</sup> 1 Turner's Engl., ch. 11, pp. 420, 421, of edi. 1825.

<sup>76</sup> His analysis is in Id., p. 421 to 424.

<sup>77</sup> 3 Lingard's Engl., ch. 1, p. 49, *et seq.*; 1 Mackintosh's Engl., p. 185 to 189, of Phila. edi. 1830; 5 Freem. Norm. Conquest, p. 475 to 478; Green's Short Hist., ch. 3, § 3, p. 153; Hist. of Engl. Peop., book 3, ch. 1, p. 244, of vol. 1.

<sup>78</sup> 1 Stubbs's Const. Hist., ch. 12, pp. 532, 533.

<sup>79</sup> His archbishops, bishops, abbots, earls, barons, justiciaries, foresters, sheriffs, governors, officers, and all his bailiffs and liegemen.

<sup>80</sup> Mr. Stubbs says, "the bishops and barons who had not taken an overt part against him, or who, only at the last moment, had joined the confederation, which compelled him to yield;" or, as he expresses it in another place, "the bishops, with *Stephen Langton* and *Pandulf* at their head, and those earls and barons who only left John after the adhesion of the Londoners." 1 Stubbs's Const. Hist., ch. 12, p. 532, and p. 542.

granted and confirmed as mentioned in 63 clauses;<sup>81</sup> among which are the following:

10. Neither we nor our bailiffs shall seize any land or rent for any debt, so long as there shall be chattels of the debtor's upon the premises sufficient to pay the debt. Nor shall the sureties of the debtor be distrained, so long as the principal debtor is sufficient for the payment of the debt.

11. And if the principal debtor fail in the payment of the debt, not having wherewithal to discharge it, then the sureties shall answer the debt; and if they will, they shall have the lands and rents of the debtor until they shall be satisfied for the debt which they paid for him, unless the principal debtor can shew himself acquitted thereof against the said sureties.<sup>82</sup>

14. No scutage or aid shall be imposed in our kingdom unless by the common council of our kingdom, except to redeem our person, and to make our eldest son a knight, and once to marry our eldest daughter; and for these there shall only be paid a reasonable aid.<sup>83</sup>

17. And for the holding the common council of the kingdom to assess aids (except in the three cases aforesaid), and for the assessing of scutages, we will cause to be summoned the archbishops, bishops, abbots, earls and great barons of the realm, singly by our letters; and furthermore we will cause to be summoned in general, by our sheriffs and bailiffs, all others who hold of us *in capite*, at a certain day; that is to say, forty days (before their meeting) at least, and to a certain place; and in all letters of such summons we will declare the cause of the summons. And summons being thus made, the business shall

<sup>81</sup> 3 Lingard's Engl., ch. 1, p. 49, *et seq.* Though numbered by Mr. Stubbs from 1 to 63, they are numbered by Mr. Taylor from 1 to 72. Mr. Stubbs's No. 1 embraces also Mr. Taylor's No. 2 in these words: "We have also granted to all the freemen of our kingdom, for us and our heirs forever, all the underwritten liberties, to have and to hold to them and their heirs, of us and our heirs." Hence the clauses numbered 7 and 8 by Mr. S., are by Mr. T. numbered 8 and 9; the first of these ending with the words, as to a widow: "She may remain in the house of her husband forty days after his death, within which term her dower shall be assigned": and the last beginning, "No widow shall be distrained to marry herself so long as she wills to live without a husband." Other differences as to numbers are mentioned

in subsequent notes.

<sup>82</sup> What Mr. Stubbs numbers 9, embraces these two clauses numbered (according to Mr. Taylor) 10 and 11. The clauses (as to debts to the Jews) numbered by Mr. S., 10 and 11, are in Mr. T.'s book 12 and 13.

<sup>83</sup> This clause which, according to Mr. S., is 12, is here numbered 14, according to Mr. T. And the clause which Mr. S. gives next as 13, embraces two given by Mr. T., as follows:

15. "In like manner it shall be concerning the aids of the city of London; and the city of London shall have all its ancient liberties and free customs as well by land as water."

16. "Furthermore, we will and grant that all other cities and boroughs, and towns and ports, shall have all its ancient liberties and free customs as well by land as by water."

proceed on the day appointed, according to the advice of such as shall be present, although all that were summoned come not.<sup>84</sup>

20. Common Pleas shall not follow our court, but shall be holden in some certain place.<sup>85</sup>

21. Trials upon the writs of *Novel disseisin*, of *Mort d' Ancèstor* and of *Darrein presentiment*, shall be taken only in their proper counties, and after this manner. We, or (if we shall be out of the realm) our chief justiciary, shall send two justiciaries through every county four times a year;<sup>86</sup> who, with four knights chosen out of every shire by the people, shall hold the said assizes, on the day and at the place of the county.

22. And if the aforesaid assizes cannot be determined on the county day, so many of the knights and freeholders as have been present, shall be appointed to decide them as shall be sufficient to make the judgments, according as there shall be more or less business.

23. A freeman shall not be amerced for a small offence, but according to the degree of the offence, and for a great offence, in proportion to the heinousness of it, saving to him his contenment; and after the same manner a merchant, saving to him his merchandize; and a villain shall be amerced after the same manner, saving to him his wainage, if he falls under our mercy; and none of the aforesaid ameracements shall be assessed but by the oath of honest men of the neighbourhood.<sup>87</sup>

<sup>84</sup> This clause (numbered by Mr. Stubbs 14) is of the greatest constitutional interest, for it admits the right of the nation to ordain taxation, and defines the way in which the nation's consent is to be given. 1 Stubbs's Const. Hist. of Engl., p. 533. In regard to it, Mr. Stubbs uses this language: "The right had never yet been stated in so clear a form, and the statement then made seems to have startled even the barons; they had not ventured to claim it, and when they had the reins of power in their own hands, they seem, in the subsequent editions of the charter, to have shrunk from repeating the clauses which contained it. It was for the attainment of this right that the struggles of the reign of Henry III were carried on; and the realization of the claim was deferred until the reign of his successor. In it, however, the nation had now obtained a clear, or comparatively clear, definition of the right on which their future political power was to be based." Id., 534.

In the next two clauses numbered by Mr. S., 15 and 16, and by Mr. T., 18 and 19, the limitation of royal exaction is supplemented by a corresponding limitation of the power of the mesne lords. Id., 534.

<sup>85</sup> 3 Lingard's Engl., ch. 1, pp. 52, 53.

<sup>86</sup> As to this arrangement, Mr. Stubbs remarks that it "proved no doubt far too burdensome to be continued." 1 Const. Hist., ch. 13, p. 605. See ch. 12 of 9 H. III, *post*, in ch. 15, § 11.

<sup>87</sup> Mr. Stubbs numbers as 17, 18, 19 and 20, the clauses here set down (according to Mr. Taylor) as 20, 21, 22 and 23. Then the clauses numbered by Mr. S. 21 and 22, are given by Mr. T. as follows:

24. Earls and barons shall not be amerced but by their peers, and according to the degree of the offence.

25. No clerk shall be amerced for his lay-tenement, but according to the proportion of the aforesaid, and not according to the value of his ecclesiastical benefice.

26. Neither a town, nor any person, shall be distrained to make bridges over rivers, unless that anciently and of right they are bound to do it.

27. No sheriff, constable (of a castle), coroners, or other our bailiffs, shall hold pleas of the crown.

29. If any one that holds of us a lay-fee dies, and the sheriff, or our bailiff, shew our letters patent of our summons concerning the debt due to us from the deceased, it shall be lawful for the sheriff or our bailiff to attach and register the chattels of the deceased, found upon his lay-fee, to the value of the debt, by the view of lawful men, so that nothing be removed until our whole debt be paid; and the rest shall be left to the executors to fulfil the will of the deceased; and if there be nothing due from him to us, all the chattels shall remain to the deceased, saving to his wife and children their reasonable shares.

30. If any freeman die intestate, his chattels shall be distributed, by the hands of his nearest relations and friends, by view of the church, saving to every one the debts which the deceased owed him.<sup>88</sup>

42. No bailiff, for the future, shall put any man to his law upon his single accusation, without credible witnesses produced to prove it.

43. No freeman shall be taken, or imprisoned, or disseised, or outlawed, or banished, or any ways destroyed, nor will we pass upon him, nor send upon him (*super eum mittemus*), unless by lawful judgment of his peers, or by the law of the land.

44. We will sell to no man, we will not deny or delay to any man, right or justice.<sup>89</sup>

<sup>88</sup> Mr. Stubbs numbers as 23, 24, 26 and 27, the clauses here numbered (according to Mr. Taylor) as 26, 27, 29 and 30. The clause numbered by Mr. S. as 25, and by Mr. T. as 28, is against increasing the farms of counties and other jurisdictions. The clauses numbered by Mr. S. as 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and by Mr. T. as 31, 32, 33, 34, 35, 37, 38, 39, 40, are briefly described by Mr. S. as follows: "The royal officers are to pay for all the provisions which they take by requisition; they are not to take money in lieu of service from those who are willing to perform the service in person; they are not to seize the horses and carts of the freeman to do royal work; nor his wood without his consent; the lands of convicted felons are to be held by the crown for a year and a day, and then to revert

to the lords; and the weirs in the Thames, the Medway and the other rivers of England, are to be removed." "The use of the writ of *præcipe* is limited; the uniformity of weights and measures is directed in the words of Richard's assize; the writ of inquest, in cases where life and limb are concerned, is to be granted freely; the king will not claim the sole wardship of the minor who has other lords, except where he is the king's tenant by knight service." 1 Stubbs's Const. Hist., 536.

<sup>89</sup> These three clauses (42, 43, 44,) are numbered by Mr. Stubbs 38, 39 and 40. Of the two last, he truly says they "are famous and precious enunciations of principles." He observes the *judicium parium* was indeed no novelty; it lay at the foundation of all German law; and the very formula here used is probably

45. All merchants shall have safe and secure conduct to go out of and come into England; and to stay there, and to pass as well by land as water, to buy and sell by the ancient and allowed customs without any evil tolls, except in time of war, and when they shall be of any nation in war with us. And if there be found any such in our land in the beginning of a war, they shall be attached, without damage to their bodies or goods, until it may be known unto us or our chief justiciar, how our merchants be treated in the nation at war with us: and if ours be safe there, the others shall be safe in our land.

46. It shall be lawful, for the time to come, for any one to go out of our kingdom and return safely and securely, by land or by water, saving his allegiance to us, unless in time of war, by some short space, for the common benefit of the kingdom, except prisoners and outlaws (according to the law of the land) and people in war with us, and merchants who shall be in such condition as is above mentioned.

49. We will not make any justiciars, constables, sheriffs or bailiffs, but of such as are knowing in the law of the realm, and are disposed duly to observe it.<sup>90</sup>

56. If any one hath been dispossessed or deprived by us, without the legal judgment of his peers, of his lands, castles, liberties, or right, we will forthwith restore them to him; and if any dispute arise upon this head, the matter shall be decided by the five and twenty barons hereafter mentioned, for the preservation of the peace.

57. As for those things of which any person has, without the legal judgment of his peers, been dispossessed or deprived, either by king Henry, our father, or our brother, King Richard, and which we have in our hands or which are possessed by others, and which we are bound to warrant and make good, we shall have a respite till the term usually allowed the crusaders; excepting those things about which there was a suit depending, or whereof an inquest had been made by our writ, before we undertook the crusade. But when we

adopted from the laws of the Franconian and Saxon Cæsars; but it was no small gain to obtain the declaration in such terms." *Id.*, 537.

<sup>90</sup> The clauses, numbered 41 and 42 by Mr. Stubbs, are 45 and 46, in the translation published by Mr. Taylor; and that numbered 45 by Mr. S., is 49 in Mr. T.'s translation. Two clauses, which precede that last mentioned (43 and 44, or, in the translation, 47 and 48), are described by Mr. S. thus: "The vassals of an escheated honour are not to be treated by the king as tenants-in-chief of the crown, but only to pay such reliefs and aids as they would owe to the mesne lord if there were one. The

forest courts are not to compel the attendance of any man who is not directly concerned in the forest jurisdiction."

1 *Const. Hist. of Engl.*, pp. 536, 537. Then, after a clause securing to certain founders of abbeys their custody, are two other clauses (47 and 48, or, in the translation, 51 and 52) by one of which all the forests made in John's time are disforested, and all rivers put in defence are thrown open; and by the other of which, a thorough investigation of all the forest usages is to be made by an inquest of twelve sworn knights, and all the bad customs are to be abolished forthwith. *Id.* (*Const. Hist.*), p. 537.

return from our pilgrimage, or if we do not go upon it, we will immediately cause full justice to be administered therein.

59. No man shall be taken or imprisoned upon the appeal of a woman for the death of any other man than her husband.

60. All unjust and illegal fines, and all amercements imposed unjustly and contrary to the law of the land, shall be entirely forgiven; or else be left to the decision of the five and twenty barons hereafter mentioned, for the preservation of the peace or of the major part of them, together with the aforesaid Stephen, archbishop of Canterbury, if he can be present, and others whom he shall think fit to take along with him; and if he cannot be present, the business shall, notwithstanding, go on without him; but so that, if one or more of the aforesaid five and twenty barons be parties in the same cause, they shall be set aside so far as concerns that judgment, and others be chosen in their room by the rest of the said five and twenty, and sworn to decide that matter.

61. If we have disseised or dispossessed Welshmen of any lands or liberties, or other things, without the lawful judgment of their peers in England or in Wales, they shall immediately be restored to them; and if any dispute arises upon this head, the matter shall be determined in the March by the judgment of their peers; for tenements in England, according to the law of England, for tenements in Wales, according to the law of Wales, for tenements in the March, according to March law.<sup>91</sup> The same shall the Welsh do to us and ours.

65. All the aforesaid customs and liberties which we have granted to be holden in our kingdom, as much as belongs to us, towards our men, all of our men, as well clergy as laity, shall observe, as far as they are concerned, towards their men.<sup>92</sup>

<sup>91</sup> The three-fold division of the districts, the Dane law, the West Saxon and the Mercian law, which subsisted so long, disappears after the reign of Stephen. *Id.*, p. 545.

<sup>92</sup> The clause numbered by Mr. Stubbs 52, embraces clauses 56 and 57 in the translation published by Mr. Taylor; the clauses numbered 54, 55 and 56 by the former, are 59, 60 and 61 in the translation; and the clause numbered 60 by the former, is 65 in the latter. Mr. S. has in view clauses 49, 50 and 51 (or, in the translation, 53, 54 and 55), when he observes: "The king undertakes to surrender all charters and hostages placed in his hands as securities, and to dismiss his detested group of foreign servants whom he had gathered round him either

as leaders of mercenaries or as ministers of small tyrannies. As soon as pacification is completed he will dismiss all his mercenaries, forgive, and recall all whom he has disseised or exiled." *1 Const. Hist.*, p. 538. The clauses numbered by Mr. S. 53 and 57, and in the translation 58 and 62, provide, the one a respite for doing justice as to disafforesting, and as to wardship of lands and as to abbeys, and the other, for a respite as to things of which a Welshman has been disseised or deprived. And the clauses numbered by Mr. S. 58 and 59, and in the translation 63 and 64, provide for a release of a Welsh prince and Welsh hostages, and for justice to Alexander, king of the Scots.

After which the clauses numbered by Mr. Stubbs 61 and 62, and in the translation 66, 67 and 68, provide for security to the barons by their choosing five and twenty barons to cause to be observed the peace and liberties granted them, and by the charter confirmed. Then come the provisions mentioned below,<sup>93</sup> after which are the following:

71. Wherefore we will and firmly enjoin, that the church of England be free, and that all men in our kingdom have and hold all the aforesaid liberties, rights and concessions, well and in peace, freely and quietly, fully and wholly to them and their heirs, of us and our heirs, in all things and places forever as aforesaid.

72. It is also sworn, as well on our part as on the part of the barons, that all the things aforesaid shall faithfully and sincerely be observed.

Such is the great charter<sup>94</sup>—revered as one of the main pillars of the English constitution.

Thereby, the barons “checked the most galling abuses of feudal superiority; they gave a new tone to English legislation; they justified resistance to the encroachments of despotism; and, in subsequent struggles with the crown, pointed to determinate objects the efforts of the nation.”<sup>95</sup>

Who were the barons that thus impose limits on tyranny, and place themselves in the vanguard of liberty? They “fall into four classes: those who began the quarrel in A. D. 1213, by refusing to follow the king to France; those who joined them after the councils held at St. Albans’ and in St. Paul’s; those who left the king in the spring of A. D. 1215, after the adhesion of the Londoners; and those who continued with him to the last. Each of these divisions contained men who acted on the ground of public right, and others who were mainly influenced by private friendship and gratitude, or by the desire of avenging private wrongs.”<sup>96</sup>

Mr. Stubbs considers it proved that “the first cry for freedom

<sup>93</sup> The clause numbered by Mr. Stubbs 62, and embracing in the translation 69 and 70, provides for remission and forgiveness, and for letters patent.

<sup>94</sup> 1 Stubbs’s Const. Hist., ch. 12, p. 532 to 538. An additional document, in

the nature of ‘covenant of security,’ is in Taylor’s Book of Rights, p. 32 to 34.

<sup>95</sup> 3 Lingard’s Engl., ch. 1. p. 57.

<sup>96</sup> 1 Stubbs’s Const. Hist., ch. 12, pp. 539, 540.

came from the North; that it was taken up and maintained by the strength of the baronial party, which had learned the benefit of law, peace and good government, and that the demands of the confederates took a definite and defensible form under the hand of the archbishop, and on the model of" the charter of Henry I; "that this basis of agreement was accepted by the people at large, and especially by the Londoners, who, to some extent, represent the commons of the kingdom; and was finally adhered to by the most important members of the government, with William Marshall at their head."<sup>97</sup> "The Great Charter is, then, the act of the united nation, the church, the barons and the commons, for the first time thoroughly at one."<sup>98</sup>

8. *After Magna Charta, Hubert de Burgh is made chief justiciary. Measures ostensibly to complete the pacification; yet both parties arming. Improper claim of the pope to temporal power. How far his power was exerted on the side of John. The barons offer the crown of England to Lewis, son of Philip of France, and husband of Blanche of Castile. In 1215-16 Lewis's army came. He was at London in June, 1216; in October, John was seized with illness, on the 14th, and died on the 19th.*

A few days after Magna Charta was granted, *Hubert de Burgh*<sup>99</sup>

<sup>97</sup> I Stubbs's Const. Hist., ch. 12, p. 543. During John's reign, *William Marshall* was entrusted with the sheriffalties of Gloucestershire, Sussex and Surrey and with the custody of the castles of Carmarthen, Cardigan and Goher. The king rewarded him with grants of Goderich castle, in Herefordshire, and of the whole province of Leinster, besides several others of minor importance. Foss's Biogr. Jurid.

<sup>98</sup> I Stubbs's Const. Hist., ch. 12, p. 543.

<sup>99</sup> From an early period of his life he was in the service of Richard I. In 1 John, he was one of the pledges, on the king's part, that the convention with Reginald, earl of Bologne, should be faithfully kept; and was witness to a royal charter. In the same year he was

made king's chamberlain; after which he advanced rapidly in the royal favour. The castles of Dover and Windsor were committed to his charge; he was appointed sheriff of Dorset and Somerset; and was entrusted with the custody of the county and castle of Hereford, and the office of warden of the Marches; Richard de Seinges, being his deputy in the latter county (Hereford) for three years, commencing 3 John. In this year he had, in addition, the sheriffalties of Cornwall and Berkshire; and a license to fortify his castle of Dunestore in Somersetshire. On the defeat of Arthur, earl of Brittany, in August, 1202, that prince was sent to Falaise, under the charge, as some relate (*Holinshed* ii, 285), of Hubert de Burgh; and a beautiful scene of Shakspeare (the first in act



was raised to the high office of chief justiciary of England.<sup>100</sup> During the rest of the month (June, 1215), there were measures ostensibly to complete the pacification. As to John's proceedings, statements of other writers<sup>101</sup> may be compared with those of Mr. Stubbs.

"On the 18th, the king directed his partisans to abstain from hostilities; on the 19th the writs were issued for the inquest into the evil customs;<sup>102</sup> on the 23d, Hugh de Boves was ordered to dismiss the mercenaries assembled at Dover; on the 27th, directions were given for a general enforcement of the oath of obedience to the twenty-five executors of the charter; writ after writ went forth for the restoration of hostages and castles, and for the liberation of prisoners. The 16th of August was fixed as the day for general restitution and complete reconciliation; in the meantime the city of London was left in the hands of the twenty-five, and the Tower was entrusted to the archbishop as umpire of conflicting claims. Under this superficial appearance of peace, both parties were arming."<sup>103</sup>

That learned Roman Catholic and eminent lawyer, Mr. *Charles Butler*, considered that "to the compilations of Isidore<sup>104</sup> and Gratian,<sup>105</sup> one of the greatest misfortunes of the church, the claim of the popes to temporal power by divine right, may, in some measure be attributed." He observes "That a claim so unfounded and so impious, so detrimental to religion, and so hostile to the peace of the world, should have been made, is strange—stranger yet is the success it met with."<sup>106</sup>

On the 16th of August "the bishops met at Oxford, the barons at Brackley; the king failed to appear."—"A papal letter was laid before

4 of King John) is Hubert's supposed refusal to obey the king's cruel behest. On king John's being summoned, after the completion of the treaty, to answer the charge before Philip of France and his peers, Hubert was sent with Eustace, bishop of Ely, on a mission to that court. In 1214, Hubert is mentioned as seneschal, and also as mayor, of Niort, and shortly afterwards as seneschal of Poitou. As such he was in attendance at Runnymede, when Magna Charta was granted. Foss's Biogr. Jurid. He first appears as justicier on the 24th of June. 2 Stubbs's Const. Hist., ch. 14, p. 12,

note 1; citing Rot. Pat, i, 143.

<sup>100</sup> Id.

<sup>101</sup> 1 Turner's Engl., ch. 11, p. 425 to 427, of edi, 1825; 1 Mackintosh's Engl., pp. 189, 190, of Phila. edi., 1830; Penny Magazine for 1845, Sept., p. 360.

<sup>102</sup> Select Charters, part 5, p. 298; 2 Const. Hist., ch. 14, § 169, p. 6.

<sup>103</sup> Id.

<sup>104</sup> Isidore, archbishop of Seville, died in 636.

<sup>105</sup> Gratian is mentioned in ch. 10, § 4, p. 174.

<sup>106</sup> Horæ Juridicæ Subsecivæ, v, 2, pp. 114, 115 of Phila. edi. 1808.

the prelates, in which the archbishop was charged to excommunicate the king's enemies, and the disturbers of the peace; and Pandulf,<sup>107</sup> with the bishop of Winchester, and the abbot of Reading, was empowered to compel obedience." After discussion, the bishops made another appeal to the king; and tried to induce him to meet the barons.

"Their mediation failed, and on the 26th day of August, at Staines, they published the sentence in the presence of the baronial army; each party interpreting it in their own way, and a majority regarding John as his own worst enemy, the great disturber of the peace, on whom, sooner or later, the curse would fall. This act broke up the temporary peace. John now made no secret that he was collecting forces. The twenty-five allotted amongst themselves the counties that were to be secured, and summoned a council to take into consideration the election of a new king; Pandulf and his colleagues proceeded to a personal excommunication of the more eminent leaders, who, in reply, appealed to the general council summoned for the following November. *Langton*, who saw himself powerless, determined to go to Rome."<sup>108</sup>

"The departure of Langton, and the end of harvest, gave the signal for war. This was early in September."<sup>109</sup>—"The clergy, although they sympathized with the barons, were paralyzed by the weight of ecclesiastical authority arrayed on behalf of John, and having lost their leader, could show their sympathy only by contemning the papal threats."<sup>110</sup>

"At first the barons mistrusted their own strength. The abstention of the bishops, the strong measures of the pope, who, on the 25th of August, annulled the charter, forbade John to keep his oath, and summoned the barons to account for their audacious designs; the return of the most powerful earls to the king's side, and John's own unexpected readiness and energy, seem to have thoroughly disheartened them. Foreign aid must be obtained, and it could be obtained only on one condition—they must renounce their allegiance to John

<sup>107</sup> An envoy from Rome. The statement in the text is from 2 Stubbs's Const. Hist., ch. 14, p. 7. Dr. Lingard says of the pope, "he ordered Langton to excommunicate the disobedient; but that prelate refused; in punishment, he was suspended from the exercise of the archi-episcopal functions; nor could he, although he attended the council at Rome, mollify the pontiff or recover the exercise of his authority. Another sentence of excommunication was then fulminated, in which the chiefs of the

confederates were mentioned by name, and the city of London was laid under an interdict. Both censures were equally despised. They had been obtained, so the partisans of the barons argued, on false suggestions, and for objects not within the jurisdiction of the pontiff. He had no right to interfere in temporal concerns." 3 Lingard's Engl., ch. 1, p. 62.

<sup>108</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 7, 8.

<sup>109</sup> Id., p. 8. <sup>110</sup> Id., p. 9.

and choose a new king. Saer de Quincy was sent to offer the crown to Lewis, the son of Philip of France;”<sup>111</sup> and “husband of Blanche of Castille, the daughter of the only sister who had survived Richard.”<sup>112</sup>

Saer de Quincy, with 41 transports, reached London on the 9th of January, 1215-16; on the 21st of May, Lewis himself landed at Stoner. Without stopping, as his father advised him, to secure Dover, Lewis pressed on by Canterbury and Rochester to London, where he received the homage and fealty of the barons on the 2d of June.”<sup>113</sup> The country was suffering greatly from the desolations of war, when John was seized with a fatal illness at Sleaford on the 14th of October, and died at Newark on the 19th.<sup>114</sup> Of him, Mr. Stubbs says :

“He was the very worst of all our kings; a man whom no oaths could bind, no pressure of conscience, no consideration of policy, restrain from evil; a faithless son, a treacherous brother, an ungrateful master; to his people a hated tyrant. Polluted with every crime that could disgrace a man; false to every obligation that should bind a king, he had lost half his inheritance by sloth, and ruined and desolated the rest. Not devoid of natural ability, craft or energy, with his full share of the personal valour and accomplishments of his house, he yet failed in every design he undertook, and had to bear humiliations, which, although not without parallel, never fell on one who deserved them more thoroughly, or received less sympathy under them.”<sup>115</sup>

<sup>111</sup> Id., p. 9. “They used the power which the theory of election gave them, of setting aside one who had proved himself unworthy; the theory also of feudal relation compelled them to maintain his right only so long as he maintained theirs. Some few of them, perhaps, regarded the election of Lewis as a mere stratagem, by which, without declaration of war, Philip might be induced to withdraw from John’s side the French mercenaries whom he had been allowed to enlist.” Id., p. 10.

<sup>112</sup> Id., p. 13. Eleanor, of Castille, died Octo. 21, 1214. She was the only surviving sister at the time of Richard’s death. Id., note 4.

<sup>113</sup> He is said to have made promises of good laws, and of the restoration of lost heritages; but he does not seem to

have bound himself by any formal constitutional engagements, or promised to observe the charter; such undertakings were probably left for another day. Id. p. 15.

<sup>114</sup> Id., p. 15 to 17. The day of John’s death is mentioned as the 18th of October, 1216,” in 1 Mackintosh’s Engl., p. 190, of Phila. edi., 1830; but according to others, the 19th was the day. Mr. Turner says, “An intemperate meal of peaches and new ale threw him into a dysentery, of which he died at Newark, the 19th October, 1216.” 1 Turner’s Engl., ch. 11, pp. 427, 428, of edi. 1825.

<sup>115</sup> Id., p. 17. John, as directed in his will, was buried at Worcester a few days after his death. Id., p. 18. Isabella, who had been engaged to Hugh, count

## CHAPTER XIV.

### REVIEW OF THE PERIOD FROM 1154 TO 1216.

#### *1. Increased study of the civil law. Beneficial influence of Oxford.*

If "the study of the civil law was prohibited by King Stephen,"<sup>1</sup> that prohibition was not of long continuance; in the succeeding reign there was no obstacle to the study of the Justinian laws.

"Henry the Second so effectually forwarded the views of Archbishop Theobald, and those under him, that from that time those very laws were with more safety cherished here, and held, at least by some, in much greater esteem than before."<sup>2</sup>

Sylvester Giraldus Cambrensis, who flourished in the reigns of King Richard and King John, is supposed by Selden to cite under the name of Elements, the Institutes of Justinian.<sup>3</sup>

"Doubtless there were a great many, in those days, who wholly applied themselves, *legibus terræ*, to the study of the laws of the land, or to those of our own country, without the least regard to the Imperial Laws."<sup>4</sup>

But Mr. Charles Butler, who, as to Roger Vacarius (mentioned in ch. 10, § 4, p. 173), made the observation below,<sup>5</sup> says of the civil law :

de la Marche, before she became John's queen, was, about 1220, married to Hugh; she died in 1246, and was buried at Fontevraud. Miss Strickland's Queens of England, vol. 2, p. 42, and p. 44 of Phila. edi., 1857.

<sup>1</sup> Horæ Juridicæ Subsecivæ, p. 71, of Phila. edi., 1808.

<sup>2</sup> Joannes Seldeni ad Fletam Disser-

tatio,' ch. 8, § 1, pp. 186, 187, of Kelham's translation in 1771.

<sup>3</sup> Id., p. 192.

<sup>4</sup> Id., p. 199.

<sup>5</sup> "Students flocked to him in such abundance as to excite the jealousy of the government; and the study of the civil law was prohibited by King Stephen." Horæ Juridicæ Subsecivæ, p. 71.

"It continued, however, to be encouraged by the clergy, and became so favorite a pursuit, that almost all who aspired to the high offices of church or state, thought it necessary to go through a regular course of civil law, to qualify themselves for them."<sup>6</sup>

"Through the peaceful reign of Henry the Second, Oxford quietly grew in numbers and repute, and forty years after the visit of Vacarius, its educational position was fully established."—"At the opening of the thirteenth century, Oxford stood without a rival in its own country, while in European celebrity it took rank with the greatest schools of the western world."<sup>7</sup>

2. *Need for beneficial influence to restrain such despotic power as is adverted to in ch. 10, sec. 1. Instances of its exercise in John's reign.*

In the reign of the last surviving son of Henry II, there was need for all the good that could be obtained from any beneficial influence. The despotic power adverted to in the first section of chapter 10 (p. 168), was not at once relinquished. In the case of *William de Beaumont*, in 31 Hen. II,<sup>8</sup> it may not have been wrong to fine 'the faithless William' fifty marks, or to fine 'his manœuvring father-in-law' double that amount; and if this money was paid, it might have been very just that it should not remain in the king's treasury, but go to "the daughter of Ranulph de Gedding." And in the case of *Henry de Wichinton*, in 8 Ric. I,<sup>9</sup> it may have been very right to discharge him from a fine for custody and marriage, obtained by another instead of him. But in the reign of John, there were the following cases :

1 John. As to *Philip Fitz-Robert*, there is an entry of his paying a fine of £200, and 100 bacons, and 100 cheeses for the grant of the

<sup>6</sup> Id.; 1 Spence's Eq., book 2, ch. 2, p. 108, of vol. 1.

<sup>7</sup> Green's Short Hist., ch. 1, § 4, p. 158 to 162; Green's Hist. of Eng. Peop., book 3, ch. 1, p. 200 to 205 of vol. 1, edi. 1879. The quotation in the text is from p. 201.

<sup>8</sup> It seems he "had contracted to marry the daughter of Ranulph de Gedding, but altering his mind, had taken to wife the daughter of Maurice de Barsham; whereupon the faith-

less William was fined fifty marks, while his manœuvring father-in-law was fined in double that amount for permitting the breach of the contract." Foss's Biogr. Jurid.

<sup>9</sup> He "was discharged from the sum of sixty marks, which he had been fined for the custody and marriage of the daughter of Philip de Niewebote; the king having granted the same to Ralph de Gernemure." *Id.*; citing Madox, i, 202, 323.

wardship and land of the heir of *Ivo de Munby*, till he was of age.<sup>10</sup>

6 John. Case of the widow of *Hugh Bardolph*, mentioned in ch 13, § 4, p. 242.

7 John. The king, in consideration of 600 marks and six palfreys, granted to *Richard Flandrensis* (or *le Fleming*), and his four sons after him, the custody of certain lands, and the wardship and marriage of the heir of *Richard de Greinville*.<sup>11</sup>

7 John. *Elizabeth*, "one of the daughters and co-heirs of William Avenel, of Hadden, in the Peak in Derbyshire," married *Simon Basset* (son of William Basset, lord of Sapcote) and being now "his widow, is fined 80 marks to the king, to have her inheritance (which the king had seized on her husband's death) and that she should not be compelled to marry."<sup>12</sup>

9 John. *William Fitz-Warine* (mentioned in ch. 15, § 11) obtained royal '*litteras deprecatorias*' to Gila de Kilpec, urging her to marry him without delay; for which intercession he presented the king with a horse and a palfrey.<sup>13</sup>

16 John. The widow of *Stephen de Turnham* paid 60 marks and a palfrey for liberty to marry with whom she pleased.<sup>14</sup>

3. *What formed the strongest link between the witenagemot of Edward the Confessor and the court and council of the Conqueror and his sons. Of Lanfranc and Anselm; Roger of Salisbury, Becket, Hubert Walter and Stephen Langton. Of the Exchequer and the Curia Regis during the reigns of Henry II and his sons.*

In the view of Mr. Stubbs, it was the English "church which combined Norman and Englishman in one service."—"It was the action of *Lanfranc* and *Anselm* that formed the strongest link between the witenagemot of the Confessor, and the court and council of the Conqueror and his sons. It was the hard and systematic work of *Roger of Salisbury* that gave order to the Exchequer and the Curia. The work of *Becket*, as chancellor, is thrown into the shade by his later history, but he certainly was Henry's right hand in the initial reforms of the reign; and the men who carried out those reforms in a direction contrary to the policy which Becket, as archbishop, adopted, were men who trod in the footsteps of his earlier life. *Hubert Walter*, the administrator of Henry's system, who, under Richard and John, had completed the fabric of strong government by means of law, and *Stephen Langton*, who deserves more than any other person the credit of undoing the mischiefs that arose

<sup>10</sup> Foss's Biogr. Jurid.; citing *Rot. de Oblatis*, 24.

<sup>11</sup> Foss's Biogr. Jurid.; citing *Rot. de Finibus*, 221, 295, 362.

<sup>12</sup> In 10 Hen. III, this lady died, and her land went to her son, William Bas-

set, to whom she had given it 'as her heir,' and who was afterwards one of the justices itinerant for Derby, Nottingham and other counties. Foss's Biogr. Jurid.

<sup>13</sup> Foss's Biogr. Jurid.

<sup>14</sup> Id.

from that system, maintaining the law by making the national will the basis of the strength of government, were both representative men of the English church."<sup>15</sup>

"The Exchequer and the *curia regis* continue," through the reigns of Henry II and his sons, "to exist in that close union which proves their original identity; but whereas under Henry I the financial character, under Henry II the judicial aspect, of the board is the most prominent. In the former reign the *curia regis*, except when the king takes a personal share in the business, seems to be a judicial session of the exchequer, an adaptation of exchequer machinery to judicial purposes; under the latter the exchequer seems to be rather a financial session of the *curia regis*. The king is, ostensibly, the head of the one, the justiciar the principal actor in the other; but still the fabric is the same: the judges are the same; the transactions of the *curia* frequently take place in the chamber of the exchequer, and are recorded in its rolls; and through all the changes by which the *curia* is modelled and divided, the exchequer forms a rallying point, or common ground, on which all the members of the supreme judicature seem, as in the exchequer-chamber" (of modern times), to meet.<sup>16</sup> Mr. Stubbs's conclusion,<sup>17</sup> for the present, is this: "From the year 1179, sessions of '*justitiiarii in banco*'<sup>18</sup> are regularly held in the *curia regis*, nominally, but not actually, '*coram rege*.' These justices are a selection from a much larger staff, before whom exchequer business is done, and who undertake the work of the

<sup>15</sup> 1 Const. Hist., pp. 632, 633. Mr. Stubbs says, "No doubt there were evils in the secular employments of these great prelates; but if for a time the spiritual work of the church was neglected, and unspiritual aims fostered within her pale, the State gained immensely by being administered by statesmen whose first ideas of order were based on conscience and law, rather than on brute force. Nor was the spiritual part of the work unprovided for. Three archbishops of Canterbury, *Anselm*, *Ralph* and *William*, all of them belonging to the religious rather than the secular type, had sanctioned the employment of Bishop Roger as justiciar; and without the consent of the pope, it is said, he refused to bear the title. Innocent III, when he insisted that *Hubert Walter* should resign the like office, shewed that the growing sense of the age forbade what so great a saint as *Anselm* had connived at; but that growing sense

had been educated, in great measure, by the system which it was soon to discard." Id., p. 633.

<sup>16</sup> Id., pp. 596, 597. "The court of exchequer, taking special cognizance of suits touching the revenue, possessing a different body of judges and a distinct code of customs, does not as yet exist; but it may be justly presumed that where such suits were entertained, the judges before whom they were tried would be those who were most familiar with the financial work." Id., 597.

<sup>17</sup> Id., pp. 602, 603.

<sup>18</sup> Glanville uses the words '*Coram justitiiariis in banco sedentibus*.' Lib. ii, c. 6; or *residentibus*, lib. viii, c. 1; lib. xi, c. 1; but, notwithstanding 2 Inst., pp. 22, 23, and p. xiv of preface to 8 Rep., it is thought these words do not mean the Common Bench, or court of Common Pleas. 1 Stubbs's Const. Hist., p. 602, note 2.

circuits: and it would appear probable that the selection was altered from time to time, possibly from year to year. Their work was to hear all suits that were brought before the king, not only criminal, but civil cases, in which the revenue, or rights of the king were touched, and cases of private litigation with which the king, except as supreme judge, had no concern: all the business, in fact, which came at a later period before the courts of King's Bench, Exchequer and Common Pleas. Although their deliberations were not held in the king's presence, they followed his person, or the justiciar, in the king's absence; a rule which must have been most burdensome to ordinary suitors, and which accordingly, so far as touches private civil suits, or '*communia placita*,' was abolished by Magna Carta."<sup>19</sup> "The reservation of knotty cases, to be decided by the king, with the council of his wise men," "continues the ancient personal jurisdiction of the sovereign."<sup>20</sup>

4. *Of matters out of the jurisdiction of the common law, and within the jurisdiction of the lord admiral, or some other. Of the principles of equity; the chancellor's increased importance; and the nature of his functions. How his equitable jurisdiction arose. Also of the antiquity and dignity of the keeper or master of the rolls.*

"*Altum mare* is out of the jurisdiction of the common law, and within the jurisdiction of the lord admiral, whose jurisdiction is very ancient, and long before the reign of Edward the Third, as some have supposed, as may appear by the laws of Oleron" (mentioned in ch. 12, § 15, p. 233), "that there had been then an admiral time out of mind."<sup>21</sup>

Mr. Spence observes that "the power of the king's justices to modify the rigour of the law by applying to its interpretations the principles of equity, as distinguished from those of strict law, in certain cases, is expressly recognized by Glanville<sup>22</sup> and by Bracton;"<sup>23</sup> that "such modifications constituted a part of the *jus prætorium*, which was constructed by the common law judges."<sup>24</sup>

<sup>19</sup> Clause 17, or as in translation 20, *ante* p. 255. Though the fixing of the common pleas at Westminster may be said to have broken up the unity of the curia, yet it was not until the end of the reign of Henry III that the general staff was divided into three distinct and permanent bodies of judges, each under its own chief. *Id.*, 603.

<sup>20</sup> *Id.*, 603.

<sup>21</sup> "And by many other ancient records

in the reigns of Henry the Third, Edward the First, and Edward the Second." *Co. Lit.* 260; 2 Browne's Civil Law, ch. 1, p. 24, *et seq.*

<sup>22</sup> Glanville, p. 12 *b*, 23 *b*; *edi.* 1780.

<sup>23</sup> Bracton, fo. 12 *b*, 23 *b*.

<sup>24</sup> 1 Spence's Eq. 126. The *jus honorarium* or *lex prætoria* is spoken of in *Id.* 214; and in part 2, book 1, ch. 1, pp. 322, 323, *et seq.* See also book 2, ch. 1, p. 419.



"Although there be as yet no traces of the chancellor having a separate court of his own, either for common law or equitable jurisdiction, it is certain that in the time of Henry II, he was looked up to as a high judicial authority, and he occasionally went the circuit as a justice in eyre, or of assize."<sup>25</sup>

This language of Lord *Campbell* may be read in connection with that of Mr. Stubbs. The latter speaks of "the royal justice diffused through the close personal council, or *tempered and adapted by royal grace and equity under the pen of the chancellor*, or exercised in the national assembly as in the ancient witenagemote." Admitting that "the growth of the chancellor's jurisdiction does not fall within the present period," he considers that "*the increased importance of his position is remarkable* and the germ of his future functions was in being already." He quotes *William Fitz-Stephen*, one of Becket's clerks, as writing thus:

*"Cancellarii Angliæ est ut secundus a rege in regno habeatur, ut altera parte sigilli regii quod est ad ejus pertinet custodiam, propria signet magnata; ut capella regis in ipsius sit dispositione et cura, ut vacantes archiepiscopatus, episcopatus, abbatias et baronias cadentes in manu regis ipse suscipiat et conservet; ut omnibus regis adsit consiliis, ut etiam non vocatus accedat; ut omnia sigilli feri regii clerici sui manu signentur, omnia cancellarii consilio disponantur; item ut, suffragantibus ei per Dei gratiam vite mentis, non moriatur nisi archiepiscopus aut episcopus si voluerit. Inde est quod cancellaria emenda non est."*

Mr. Stubbs supposes that the term '*secundus a rege*' probably means next after the justiciar; and states that the *Dialogus de Scaccario* (lib. i, c. 5), confirms most of the biographer's statements; "nothing is done without his" (the chancellor's) "consent and advice, either in the curia or in the exchequer; he has charge of the royal seal, sealing it up into its locus or purse, which is kept by the treasurer." Mr. Stubbs observes that, "The fact that the chancellor was always in attendance on the king, led to the petitions for royal grace and favour being entrusted to him, first for custody, and afterwards for hearing. Hence arose the equitable jurisdiction by which he remedied the '*summum jus*' of the common law," or

<sup>25</sup> *Campbell's Lives of the Chancellors*, ch. 4, p. 104, of Boston ed. 1874;

citing *Mad. Ex.*, p. 61; Lord Lyttelton's *Hist.* iii, 479; 4 *Inst.* 159.

promised remedies in cases which were not provided for by the common lawyers.”<sup>26</sup>

Not only the chancellor, but “the keeper or master of the rolls, of the king’s chancery, is an officer of great antiquity and dignity.” It is stated that in a MS. treatise of the court of chancery, Sir *Robert Cotton* writes “that the ‘Custos Rotulor.’ or Master of the Rolls, hath been an officer in this court, of as long continuance as the chancellor hath been a magistrate.”<sup>27</sup>

### 5. *Of the itinerant justices; and the shire-moot.*

The visits of the itinerant justices<sup>28</sup> form the link between the *curia regis* and the shire-moot.<sup>29</sup> The power of the sheriff had been very much limited, not only by the course of political events, but by the process of centering the administration of justice in the hands of the itinerant justices and the *curia regis*. At the beginning of the period (under Henry II and his sons), the sheriffs were the ‘*errantes iustitiæ*,’ only occasionally superseded and superintended by the itinerant justices.<sup>30</sup> From 1170, after the proceedings under Henry’s commission of enquiry,<sup>31</sup> their authority is more and more limited.<sup>32</sup>

<sup>26</sup> 1 Const. Hist., ch. 13, pp. 603, 604, note 5. For the passage in italics there may be reference to Becket’s life; Mr. Stubbs cites ‘V. S. Thom. i, 186.’

<sup>27</sup> Ch. 4, p. 95 of Legal Judic. in Ch., ed. 1727.

<sup>28</sup> Id., p. 605.

<sup>29</sup> ‘*Perlustrantes iudices*’ is the term used by the author of Dialogus; the commissioners of 1170, are called ‘*Barones errantes*.’ Mr. Stubbs observes that “the justices of the year 1176 are the first to whom the name *Iustitiarum Itinerantes* is given in the Pipe Rolls.” Id., p. 605.

<sup>30</sup> “As sheriffs, probably, they presided in the court of the county, in which the suitors were the judges and were answerable for the maintenance of the peace; as royal justices they acted under special writ, managed the pleas of the crown

and conducted the tourn and leet, or the courts which were afterwards so called. In 1166 they were still in the same position; the itinerant justices by themselves, and the sheriffs by themselves, received and acted on the presentment of the grand juries.” Id., 606.

<sup>31</sup> Id., p. 472.

<sup>32</sup> In the Assize of Northampton they are rather servants than colleagues of the itinerant justices; in 1194, it is provided that they shall no more be justices in their own counties, and the elective office of coroner is instituted to relieve them from the duty of keeping the pleas of the crown. In 1195, the duty of receiving the oath of the peace is laid, not on the sheriffs, but on knights assigned in each county, the duty of the sheriffs being only to receive and keep the criminals taken by these knights

After stating the nature of the regulations, Mr. *Stubbs* questions whether they were strictly observed, especially as before the year 1258 the sheriffs seem to be as powerful as ever, but" in his opinion, "they show a distinct policy of substituting the action of the justices for that of the sheriffs, a policy which might have led to judicial absolutism were it not that the growing institution of trial by jury vested in the freemen of the county far more legal power than it took away from the sheriffs."<sup>33</sup>

The shire-moot which assembled to meet the itinerant judges, was a much more complete representation of the county than the ordinary county court which assembled from month to month.<sup>34</sup> Not even the tenants of a great escheat in the royal hands escaped the obligation to attend their visitation. The representation was thoroughly organized: side by side with the reeve and four men of the rural townships, appeared the twelve legal men of each of the chartered boroughs which owed no suit to the ordinary county court. In the formation of the jury of presentment the principle is as clear; each hundred supplies twelve legal men, and each township four, to make report to the justices under the assize of Clarendon; and in 1194, twelve knights from each hundred answer for their hundred under all the articles of the eyre, whether criminal, civil or fiscal.<sup>35</sup>

until the coming of the justices. In 1215 the barons propose that the sheriffs shall no longer meddle with the pleas of the crown without the coroners; whilst the great charter, in the clause founded on that proposal, forbids either sheriff or coroner to hold such pleas at all." *Id.*, p. 606.

<sup>33</sup> *Id.*, pp. 606, 607.

<sup>34</sup> *Id.*, p. 607. The great franchises, liberties and manors which by their tenure, were exempted from shire-moot and hundred, were, before these visitors, on equal terms with the freeholders of the geldable, as the portion of the county was called, which had not fallen into the franchises. *Id.*, p. 607.

<sup>35</sup> *Id.*, pp. 607, 608. The manner of

the proceeding by the justices in eyre, in their eyre, is stated by Lord *Coke*, in his exposition of Stat. Westm. 1, c. 27: "First they had their authority and power by writs, which writs were at their sessions first read, '*Quibus auditis, quidam major eorum et discretior, publice coram omnibus proposuit quæ sit causa adventus eorum, quæ sit utilitas itinerationis et quæ commoditas, si pax observetur, &c.*' The charge being given, then were the bailiffs of the hundreds called, and their names enrolled, and every of them sworn, that out of every hundred they should choose four knights, who forthwith should come before the justices, and should be sworn that they should choose twelve knights,

The court thus strengthened and consolidated is adopted by the royal officers as an instrument to be used for other purposes.<sup>36</sup>

6. *From the system of recognitions, assizes and presentments, by jury, Mr. Stubbs traces the growth of the principle of representation.*

"It is in the new system of recognitions, assizes and presentments by jury that we find the most distinct traces of the growth of the principle of representation; and this in three ways. In the first place, the institution of the jury was itself based on a representative idea; the jurors, to whatever fact or in whatever capacity they swore, declared the report of the community as to the fact in question. In the second place, the method of inquest was, in England, brought into close connection with the procedure of the shire-moot, and thus the inquisitorial process, whether its object was the recognition of a right or the presentment of a criminal, was, from the moment of its introduction, carried on in association with the previously existing representative institutions, such as were the reeve and four best men, the twelve senior thegns, and the later developments of the same practice, which have been enumerated in" Mr. Stubbs's "account of the formation of the county court and the usage of legal assessment. In the third place, the particular expedients adopted for the regulation of the inquests paved the way, in a remarkable manner, for the system of county representation in the parliament, as" it is "exemplified on the first occasion of its appearance in the reign of John. The use of election and representation in the courts of law furnished a precedent for the representation of the county by two sworn knights in the national council."<sup>37</sup>—"The humble processes by which men had made their by-laws in the manorial courts and amerced the offenders; by which they had assessed the estates or presented the report of their neighbours; by which they had learned to work with the judges of the king's court for the determination of questions of custom, right, justice and equity, were the training for the higher functions, in which they were to work out the right of taxation, legislation and political determination on national action."<sup>38</sup>

or free and lawful men, if knights could not be found, &c., by whom the business of the king the better and with greater profit, might be expedited; who, being returned and sworn, then should be read to them the chapters or articles of their charge, in writing indented, the one part whereof was delivered to them and the other part remained with the justices; and commandment was given to them by the justices, that to every chapter or article they should answer in their verdict severally, and by itself, sufficiently,

distinctly and openly." 2 Inst., pp. 210, 211.

<sup>36</sup> Observing that "all who are bound to attend before the itinerant justices are compelled to attend the forest courts," Mr. Stubbs suggests "that they probably form the *posse comitatus* which elects, according to *Magna Carta*, the knights who are to take the assizes, and the twelve knights who are to enquire into the abuses which *Magna Carta* was designed to reform." 1 Const. Hist., p. 608.

<sup>37</sup> Id., pp. 608, 609. <sup>38</sup> Id., p. 623.

7. *Of the English constitutional system, as viewed by Mr. Stubbs.*

The great characteristic of the English constitutional system, as viewed in Mr. Stubbs's pages,—the principle of its growth, the secret of its construction,—is the continuous development of representative institutions from the first elementary stage, in which they are employed for local purposes and in the simplest form, to that in which the national parliament appears as the concentration of all local and provincial machinery, the depository of the collective powers of the three estates of the realm.<sup>39</sup> In the reigns of Henry II and his sons, there is traced the inter-penetration, the growing together, of the local machinery and the administrative organism; and there is a view of the great crisis by which they were brought together. Now we may begin to trace the process by which the administrative order is worked into the common law of the people, and the common institutions of the people are admitted to a share in the administration of the State.<sup>40</sup>

8. *Of legislative work during the reigns of Henry II and his sons.*

The documentary remains of the legislation of Henry II and his sons, are very scanty. The work of Glanville is not a book of statutes, but a manual of practice; and although it incorporates, no doubt, the words of ordinances which had the force of laws, it nowhere gives the literal text of such enactments. The formal edicts known under the name of Assizes, are the only relics of the legislative work of the period. They are not direct re-enactments or amendments of the ancient customary law, and are not drawn up in the form of perpetual statutes; they rather enunciate and declare

<sup>39</sup> Mr. Stubbs expresses himself thus: "We have traced in the Anglo-Saxon history the origin and growth of the local institutions, and in the history of the Norman reigns, the creation of a strong administrative system. Not that the Anglo-Saxon rule had no administrative mechanism, or that the Norman

polity was wanting in its local and provincial organism, but that the strength of the former was in the lower, and that of the latter in the upper ranges of the social system, and that the stronger parts of each were permanent." 1 Const. Hist., pp. 544, 545.

<sup>40</sup> Id., pp. 544, 545.

new methods of judicial procedure, which would either work into or supersede the procedure of the common law; yet it is to the assize that the most important legal changes of the period owe their origin.<sup>41</sup>

9. *Whence arose the systematic order. Influence of the ecclesiastical system upon local tribunals and their officers, and the forms and modes of proceeding.*

"The systematic order of the growing polity was not a little indebted to the fact that there existed in the church system a set of models of work. The church had its ranks and degrees, codes of laws and rules of process, its councils and courts, its central and provincial jurisdictions, its peculiar forms of trial and arbitration, its system of writ and record. In a crisis in which representation and election were growing into importance, and in which all forms were manipulated by clerical administrators, the newer forms must needs be moulded, in some degree, on the older."<sup>42</sup>—"The assemblies of the clergy kept up forms that were easily transferred to the local moots; the bishop's visitation was a parallel to that of the sheriff; the metropolitica visitation, to that of the Curia or Exchequer; spiritual excommunication was parallel with civil outlawry; clerical procurations with royal purveyance and the payments to the sheriff for his aid; the share of the clergy in determining their assessments, suggested the like action on the part of the lay communities, or at least familiarized men with a system of the kind."<sup>43</sup>

"The ecclesiastical system of writ, summons and record, was probably, in England, derived from the extensive documentary machinery of the church of Rome, which, in its turn, was derived from the similar practice of the later empire. The writs of the Norman curia may not improbably have been drawn by continuous practice from the formulæ of the imperial system of the Franks, great stores of which are to be found in the collections of Marculf and other jurists. The growth of the system is accordingly complex, the written forms

<sup>41</sup> Id., pp. 573, 574. In the drawing up of the assize, the king acted by the advice and consent of his national council. Mr. Stubbs gives instances to prove the share taken by the national council in such legislation. Id., pp. 574, 575.

<sup>42</sup> The legislation of the period, the assizes and constitutions, bear, in common with the Karolingian capitularies, a strong resemblance to ecclesiastical canons, a form which was universal and vigorous when the capitulary was forgotten. The local and territorial

divisions of the dioceses made indelible the civil boundaries which feudal aggression would have gladly obliterated. The arch-deaconries, deaneries and parishes preserved the local unities in which they had themselves originated, and the exempt jurisdictions of the convents were in their nature an exact parallel with the franchises of the feudal lords, and in the use of great ecclesiastical establishments, possessed both characters." Id., p. 634.

<sup>43</sup> Id., p. 634.

of procedure, both lay and clerical, being developed side by side, or in constant entanglement with one another, as might well be the case when they were drawn up by the same writer. It is, however, interesting to observe that the custom of registering the acts of court, and retaining copies of all letters issued by the king, seems to have been introduced either late in the reign of Henry II, or under Richard and John, under whom the great series of national records begin. *William Longchamp*, the chancellor and justiciar of Richard, who, with all his great faults, must have also had a great capacity for business, and who, as we learn from the Red book of the Exchequer, took pains to make himself familiar with its details, must have authorized, perhaps suggested, the enrolment of the acts of the curia; it was carried out under his vice-chancellor and successor, Bishop Eustace.<sup>44</sup> The enrolment of charters and of letters patent and close, begins in the chancellorship of *Hubert Walter*, and is carried out by *Walter de Grey*, afterwards archbishop of York,<sup>45</sup> who has left in the register of his archiepiscopal acts, one of the earliest existing records of the kind. The Lincoln registers begin with the acts of Bishop Hugh, of Wells, who had been a deputy of the chancellor from 1200 to 1209. If the episcopal registers were drawn up in imitation of the royal rolls, the latter owed both idea and form to the papal registry, the influence of which was under Innocent III, supreme in Europe, and which could trace its method through the '*regesta*' of Gregory VII and the earlier popes, to the practice of the ancient republic. In such matters it may not be strictly accurate "to say that church and state borrowed from each other; each had a vitality and a development of its own, but each gained strength, versatility and definiteness from their close union; and that close union was made closer still whilst the business of the two was conducted by the same administrators."<sup>46</sup>

<sup>44</sup> Mentioned in ch. xii, § 9, p. 226, and § 12, p. 230. His duties ended on Richard's death.

<sup>45</sup> Elected in opposition to *Simon de Langton*, brother to the primate. *Walter*

de Grey, received the pall May 24, 1216. Foss's Biogr. Jurid.

<sup>46</sup> I Stubbs's Const. Hist., pp. 635, 636, 637.

# TITLE IV.

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INSTITUTIONS OF ENGLAND FROM 1216 UNTIL 1307.

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CHAP. XV.—Institutions in the reign of Henry III—1216 to 1272.

XVI.—Institutions in the reign of Edward I—1272 to 1307.

XVII.—Review of the whole period —1216 to 1307.

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## CHAPTER XV.

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INSTITUTIONS IN THE REIGN OF HENRY III—1216  
TO 1272.

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*1. Age at which Henry was crowned; and first business of the council. Who had the guardianship of the king and the kingdom. How much of the Great Charter was republished. Wisdom of the government.*

Henry, eldest son of King John and Queen Isabella, had not completed the tenth year of his age,<sup>1</sup> when, at Gloucester, on October 28, 1216, he took the constitutional oaths. The first business of the council summoned for November 11, at Bristol, was to determine who should have the guardianship of the king and the kingdom:

<sup>1</sup> Fuller mentions him as born in 1208.

<sup>2</sup> Fuller's Worthies, edi. 1840, p. 5.  
Mr. Stubbs calls him "the boy of nine

years old," when he took these oaths.

<sup>2</sup> Const. Hist., ch. 14, p. 18.



the barons determined to appoint a regent, and chose by common assent, the earl of Pembroke<sup>2</sup> to be '*rector regis et regni*.' With him were associated as chief councillors the pope's legate (Gualo) and Peter des Roches (or de Rupibus), bishop of Winchester.<sup>3</sup>

"The Great Charter was republished;<sup>4</sup> not indeed in its completeness, but with an express statement that no permanent infraction was contemplated. All the material provisions for the remedy of administrative oppressions were retained; but the constitutional clauses, those touching taxation and the national council, were omitted. The articles that concerned the debts of the Jews, the right of entering and leaving the kingdom, the forests, warrens and rivers, were likewise put in respite until fuller counsel could be had."<sup>5</sup>

It is "by no means the least curious feature of the history that so few changes were needed to transform a treaty won at the point of the sword into a manifesto of peace and sound government; that the papal power, which a year before had anathematized the charter and its advocates, could now accept and publish it as its own; and that the barons who had to the last supported John in repudiating it, should, the moment he was taken out of the way, declare their adhesion to it. Nor is it less a proof that the baronial body, whether for or against the king, was in the main actuated by patriotic feeling, and ready to take the same line of reform."<sup>6</sup>

2. *Of the regent, William Mareschall, earl of Pembroke, and his sound policy; the chief justiciary, Hubert de Burgh, and his efforts; and the treaty of peace with Lewis of France. Pacification crowned by a new re-issue of Magna Carta, and by a new charter, the Carta de Foresta.*

The royal authority was in the hands of one who was to stand high among English patriots. His sagacious policy drew to him all save those who were hopelessly committed to the invader.<sup>7</sup> He

<sup>2</sup> *Id.*, p. 18 to 20. As to him, see ch. 12, § 1, p. 216, and ch. 13, § 3, p. 239.

"In 1212 Prince Henry had been specially committed to his care." (Rot. Pat. 95.) Now "all the first mandates, issued in the king's name, were sealed with the earl's seal, because the king" "had none." Foss's Biogr. Jurid.

<sup>3</sup> 2 Stubbs's Const. Hist., ch. 14, p. 20; 3 Lingard's Engl., ch. 2, p. 74.

<sup>4</sup> Magna Carta Regis Henrici III, XII, die Novembris Anno Regni primo, A. D. MCCXVI. 1 Stat. of the Realm

(edi. 1810), p. 14 to 16. Stubbs's Select Charters, p. 328 to 334.

<sup>5</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 20, 21. Green's Hist. of Engl. Peop., book 3, ch. 2, vol. 1, p. 253.

<sup>6</sup> 2 Stubbs's Const. Hist., ch. 14, p. 21.

<sup>7</sup> Fuller observes of Henry III, "He had scarce half a kingdom in the beginning of his reign; Lewis, of France, being brought in to be king by the English in their hot, and cast out in their cold blood." 2 Fuller's Worthies, edi. 1840, pp. 5, 6.

placed the country under a government which included all elements and found room for all energies.<sup>8</sup> Hubert de Burgh retained the office of chief justiciary.<sup>9</sup> William Briwer continued his exertions.<sup>10</sup>

In 1217, Lewis was weakened by the battle at Lincoln, May 24.<sup>11</sup> July 22 is the date of the "summons of the sheriff to bring up the county in arms."<sup>12</sup> A French armament, under command of Eustace Le Moyne, was destroyed August 24, by a fleet placed by Hubert de Burgh in command of *John Mareschall* and Philip de Albini.<sup>13</sup> Lewis was now compelled to come to terms: negotiations begun at Kingston were completed by a treaty at Lambeth on September 11. On the 23d, final arrangements were made at Merton for his departure. This treaty bespeaks sound policy, honesty and forbearance on both sides.

"Lewis stipulates for the safety of his confederates; and the royal party shows no desire of vengeance. All parties alike, individuals and communities, are restored to their lands, and are to enjoy the rights, customs and liberties of the realm. Prisoners are to be set free, and ransoms remitted under a careful arrangement to prevent fraud."<sup>14</sup>

The general pacification was crowned (November 6) by a second re-issue of the charter,<sup>15</sup> this time accompanied by a new charter, the *Carta de Foresta*,<sup>16</sup> dated November 6, in 2 Hen. III, in which the forest articles of John's charter were renewed and expanded.<sup>17</sup>

<sup>8</sup> 2 Stubbs's Const. Hist., p. 4. Green's Short Hist., ch. 4, § 3, p. 155.

<sup>9</sup> There are mandates to him in that character in 1216, and for years afterwards. For his support in this office his salary was £300 *per annum*; he had £1,000 for the custody of Dover Castle. Foss's Biogr. Jurid.; citing Devon's Issue, Roll 2.

<sup>10</sup> Till Prince Lewis was forced to retire from the kingdom. Briwer died in 1226 (2 Hen. III), and was buried in the abbey of Dunkeswell, in Devonshire. Foss's Biogr. Jurid.

<sup>11</sup> 2 Stubbs's Const. Hist., ch. 14, p. 24.

<sup>12</sup> Select Charters, p. 334.

<sup>13</sup> Foss's Biogr. Jurid. As to *John Mareschall* see further in § 6, p. 285, 286.

<sup>14</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 24, 25.

<sup>15</sup> 1 Stat. of the Realm, p. 17 to 19; Select Charters, p. 334 to 338.

<sup>16</sup> Id., p. 338 to 342; Stat. of the Realm, pp. 20, 21. Between printed pages, 20 and 21, is *Carta de Foresta*, 2 Hen. III in *Archivis Eccl. Cathed. Dunelm Asservata*.

<sup>17</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 25, 26.

3. *The Great Charta is, in the re-issue of 1217, in its final form; the text being never again materially altered. Of the charter of the forest; and the return to England in May, 1218, of Stephen Langton, archbishop of Canterbury. Also of Walter Gray, archbishop of York.*

Of the re-issue in 1217, it has been observed that it "presents the great charter in its final form;" that "although frequently republished and confirmed, the text is never again materially altered."<sup>18</sup>

"The charter of 1217 differs from the two earlier editions in several points: it does not contain the respiting clause of 1216, although it provides a substitute in its 46th article, reserving to all persons, lay and clerical, the liberties and free customs they possessed before. Two new clauses form a germ of later legislation; the 39th, which directs that no freeman shall henceforth alienate so much of his land that the residue shall be insufficient to furnish the legal services due to his lord, is said to be the first legal restraint on alienation on record in this country, and in another aspect, contains the principles of the statute *Quia emptores*; the 43d, forbidding the fraudulent transfer of lands to religious houses, stands in the same relation to the statute 'de religiosis.'"<sup>19</sup>—"The 42d article orders the county court to be held monthly, and the sheriff's tourn, which now first appears in the charters, twice a year."<sup>20</sup> The same clause also regulates the view of frank pledge, and affords the first legal evidence of its general obligation. The annual sessions of the itinerant justices are reduced from four to one, and their functions are somewhat limited."<sup>21</sup>

"The charter of the forest,"<sup>22</sup> put forth at the same time, and in like form, was probably no less popular or less important; for the vast extension of the forests, with their uncertain boundaries and indefinite privileges, had brought their peculiar jurisdictions and minute oppressions into every neighborhood, and imposed on all the inhab-

<sup>18</sup> 2 Stubbs's Const. Hist., ch. 14, p. 27.

<sup>19</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 26, 27. "The 47th clause again, which orders the destruction of adulterine castles, and the 44th, which provides that scutages shall be taken as in King Henry's time, may show that, in some points, the current of recent history had been retrogressive." Id., p. 27.

<sup>20</sup> This clause was explained and modified by Henry III, in an edict which directs the holding of hundred

and wapentake courts every three weeks, instead of every fortnight, as had been usual under Henry II. *Id.*

<sup>21</sup> "This was possibly a concession to the feudal feeling which long continued hostile to the king's aggressive judicature." Id., p. 27.

<sup>22</sup> "John issued no Forest charter;" "that given by Matthew Paris, in his name, is Henry's charter of 1217." 2 Stubbs's Const. Hist., ch. 14, p. 27, note 4.

itants of the counties in which they lay, burdensome duties and liabilities, rivalling in number and cogency the strict legal and constitutional obligations under which they still groaned. The forest courts stood side by side with the county courts, the forest assizes with the sessions of the shire and hundred; the snares of legal chicanery, the risks of offence done in ignorance, lay in double weight on all. This charter was a great measure of relief."<sup>23</sup>

Langton returned to England in May, 1218; "he had in Walter Gray, now archbishop of York (a position which he held for forty years), an experienced colleague in the government of the church, and a helper of official knowledge, honesty and ability."<sup>24</sup>

4. *Testimonial to the great man who, after acting as guardian to the king and regent of the kingdom, died May 14, 1219.*

Of William Marshall, earl of Pembroke, it is said:

That "by the skill of his arrangements and the activity of his movements, he defeated the invading prince, intercepted and destroyed the French fleet sent to his aid, and compelled him to sue for peace and abandon his enterprise; by his moderation he induced most of the discontented barons to submit to the royal authority; and by his energy in punishing those few who still resisted, he compelled the respect that was due to the sovereign power, and in less than two years restored to the kingdom, which had so long suffered from civil contentions, the blessing of internal peace."<sup>25</sup>

"The aged warrior who had shared the rebellion of the younger Henry in 1173, and had stood by his death-bed; who had overthrown the administration of William Longchamp, and joined in the outlawry of John; who had been, in 1215, the mainstay of the royal party, and had seen his son the leading spirit of the opposition; who had secured the crown for Henry III, by holding out the promises of good government, which his father had broken,—now puts forth as a

<sup>23</sup> "The inhabitants of the counties not living within the forests are released from the duty of attending the courts, except on special summons; the forests made in the last two reigns are disafforested; much of the vexatious legislation of Henry II is annulled, and the normal state of the rights of landowners adjusted to their condition at the time of that king's coronation." *Id.*, p. 28.

<sup>24</sup> 2 Stubbs's *Const. Hist.*, ch. 14, p. 29. If Langton's return to England

was in May, 1218, as stated by Mr. Stubbs from *Ann. Mailros*, p. 196, then there is inaccuracy in Mr. Green's statement that Langton's return to England is marked by a second issue of the charter, and the addition of a charter of the forest. *Short Hist.*, ch. 3, § 5, p. 166. This is omitted in Mr. Green's more recent work. *Hist. of Engl. Peop.*, book 3, ch. 2, p. 253, of vol. 1, ed. 1879.

<sup>25</sup> Foss's *Biogr. Jurid.*

constitutional platform the document whose growth and varying fortunes he had so carefully watched."<sup>26</sup>

One of the last public acts of William Marshall's life was to induce the council of the realm to provide that no charter, letters patent of confirmation, alienation, sale or gift, or any other act that implied perpetuity, should be sealed with the great seal before the king reached full age.<sup>27</sup> Immediately afterwards, Gualo, who had been earnest in his support of the secular government, and faithful to his public duties, returned to Rome, and was succeeded by Pandulf, who was already too well known in England.<sup>28</sup> The regent, who had flourished in four reigns, during three of which he was high in the royal confidence, died in the spring of 1219, to the great regret of the whole nation.<sup>29</sup>

5. *Under whose care Henry was after the death of the Earl of Pembroke. Who inherited that earl's preëminence. How the policy of Peter, bishop of Winchester, differed from that of Hubert de Burgh, the justiciar. Of Henry's second coronation, May 17, 1220; and other matters in 1220, 1221 and 1222.*

"Henry remained under the care of the bishop, Peter, of Winchester; but that ambitious prelate did not venture to call himself '*rector regis et regni*;' nor did Pandulf assert any such right on behalf of his master. The personal preëminence which had been allowed to the earl Marshall, seems to have been inherited by the justiciar," (*Hubert de Burgh*), "although the writs which had been hitherto attested by the regent as the king's representative, were frequently<sup>30</sup> from this time, attested by Bishop Peter. The bishop's functions were probably those of the king's personal guardian, and

<sup>26</sup> 2 Stubbs's Const. Hist., ch. 14, p. 28; also, p. 26.

<sup>27</sup> This provision was made between Octo. 7, 1218, and Feb. 24, 1219, probably on Nov. 5, on which day the king's seal was first used. 2 Stubbs's Const. Hist., ch. 14, p. 30, and note 2. In 1227 (when the king came of age) it was interpreted to imply the nullity of charters issued during the minority, and letters were issued directing application for their renewal. The renewal was to be purchased at a valuation fixed by the justiciar. It seems to have been a means

for raising money. Id., pp. 39, 40.

<sup>28</sup> Id., pp. 29, 30. Gualo left on the 23d of Nov.; Pandulf arrived Dec. 3. Id., p. 30, note 3.

<sup>29</sup> He died May 14 at his manor of Caversham, near Reading, and was buried on Ascension day, or the morrow of it (May 16 or 17), in the church of the new temple in London, where his monumental effigy still remains. Id., p. 30, and note 3; 1 Turner's Engl., ch. 12, p. 433, note 6, citing Matt. Paris 304. Foss's Biogr. Jurid.

president of the royal council. His policy was to support the foreign influences which it was the great aim of Langton and the justiciar to eliminate. The amicable relations which had subsisted under the earl Marshall, were for a short time, maintained; the crusade called away many of the leaders in the late quarrel,<sup>30</sup> and the specific policy of the government could not be at once reversed. The second coronation of Henry, which was performed on the 17th of May, 1220, by the archbishop, at Westminster, was regarded as typical of the full restoration of peace and good government."<sup>31</sup>

For the method of assessing taxes in John's time, there was by the writ of August 9, 1220, 'for the collection of a carucage,' substituted action of two knights, chosen in full assembly, and by the 'will and counsel' of the county court. Mr. Stubbs regards this "as illustrating the increased use of the representative principle in financial matters and the connection of election with representation."<sup>32</sup>

In midsummer, 1221, Pandulf returned to Rome.<sup>33</sup> Henry, of London, who assisted at the coronation of Henry III, was appointed justiciary of Ireland in October, 1221, and administered the affairs of that kingdom till the middle of 1224.<sup>34</sup>

As William Marshall's work was to restore the administrative system, that of Hubert was to replace the working of that system in English hands. He "had already, by his faithfulness, by his military prowess, and by his wise moderation in public policy, proved his fitness to rule." The resignation of Pandulf and the defeat of William, of Aumale, had now weakened the position of Peter des Roches. He contemplated joining the crusade, and made a pilgrimage to Compostella. But his absence did not ensure peace.<sup>35</sup>

In 1222 the interest at court of Hubert de Burgh was strengthened

<sup>30</sup> 2 Stubbs's Const. Hist., ch. 14, p. 31; 1 Turner's Engl., ch. 12, p. 433. *Ranulph Blundevil*, earl of Chester, who was a justicier in 1193, and assisted King John throughout his troubles, was equally conspicuous in securing the throne to his son Henry. As soon as the kingdom was at rest he departed for the Holy Land, and was present at the siege of Damietta. He returned in

1220. Foss's Biogr. Jurid.

<sup>31</sup> 2 Stubbs's Const. Hist., ch. 14, p. 31.

<sup>32</sup> Select Charters, pp. 342, 343.

<sup>33</sup> 2 Stubbs's Const. Hist., ch. 14, p. 32; 3 Lingard's Engl., ch. 2, p. 84.

<sup>34</sup> He surrendered the office (in 1224) to the earl of Pembroke, and died in 1225. Foss's Biogr. Jurid.

<sup>35</sup> 2 Stubbs's Const. Hist., ch. 14, p. 29, p. 32 and p. 33.

by his marriage with Margaret, eldest sister of Alexander, king of Scotland.<sup>36</sup>

6. *Of Richard de Marisco, chancellor until 1226; William of Ely, treasurer until 1223; Eustace de Fauconbridge treasurer from 1223 to 1228; and of others in judicial office, among whom, in 2 Hen. III, was Alan Basset, a son of Thomas Basset; and in 3 Hen. III, William de Cantilupe, John Mareschall (or Marshall), Walter Mauclerk, Thomas de Muleton, Richard Poore (bishop of Chichester, Salisbury and Durham), Philip de Ulecot, Robert de Veteri Ponte and Josceline de Wells (bishop of Bath and Wells).*

*Richard de Marisco* was, on the accession of Henry III, continued in the chancellorship; in the first year of this reign, raised to the bishopric of Durham; and in the third year thereof placed at the head of the justices itinerant in Yorkshire and Northumberland. The bishop being obliged to go to Rome to meet some charges, was absent from England in January, 1221. Ralph de Neville, dean of Lichfield, was employed as his deputy in the duties of the chancery; and, it seems, was attempting to supersede him in his office.<sup>37</sup> For omitting in his letters to address *Richard de Marisco* by the title of 'chancellor,' the dean was, in a letter from the chancellor, reproved, and advised 'for the future to act a discreeter part;' the dean is told that 'reverence for the law requires that every one should be called by the name of his dignity. Accius, the poet, being addressed at supper by his own proper name, brought his action of damages.'<sup>38</sup> The bishop had a sudden death.<sup>39</sup>

*William of Ely*, a canon of the church of Lincoln, was the king's

<sup>36</sup> Thus becoming allied to his sovereign, whose sister, the princess Joanna (or Jane), had been recently united to the Scottish king. Foss's Biogr. Jurid.

<sup>37</sup> Foss's Biogr. Jurid.

<sup>38</sup> "*Legis enim reverencia est quem vis nomine dignitatis nuncupare, et Accium poetam in cenaculo proprio nomine compellatum injuriarum egisse.*" Orig. in Turr. Lond. is cited in 1 Campbell's Lives of the Chancellors, ch. 7, p. 129,

of 2d ed. (1846), pp. 125, 126, of Boston ed. 1874. 5 Report Pub. Rec., app. ii, 66, is cited in Foss's Biogr. Jurid.

<sup>39</sup> Travelling to London to attend a legatine council, he stopped for one night at the monastery of Peterborough, and was found dead in his bed on the following morning (May 1, 1226). His body was removed to Durham, and there buried in the cathedral. Foss's Biogr. Jurid.

treasurer during the whole of John's reign, and part of that of Henry III.<sup>40</sup> *Eustace de Fauconbridge*, who acted as a justicier during the whole of John's, and for the first three years of Henry's reign, was in 2 Hen. III, appointed treasurer, and held this station for the remainder of his life.<sup>41</sup> Many others in judicial position in John's reign, were continued in such position in this reign.<sup>42</sup>

Among those in office in 2 Hen. III,<sup>43</sup> was *Alan Basset*,<sup>44</sup> third son of *Thomas Basset*, of Hedendon (mentioned in ch. 11, § 13 and § 15 p. 202, and p. 208). Among those in 3 Hen. III,<sup>45</sup> were *William*

<sup>40</sup> He died in 8 Hen. III (1223). Foss's Biogr. Jurid.

<sup>41</sup> He was employed in embassies to the court of France in 1204, 1223, and 1225. He held a canonry in the cathedral of St. Paul's, and in 1221 (5 Hen. III) was elected bishop of London. He died Octo. 31, 1228, and was buried in his cathedral. *Id.*

<sup>42</sup> *James de Poterna*, who acted as a justicier from 9 Ric. I, through the whole of John's reign, was continued in judicial position under Henry III; in the third year of this reign he was one of the justices itinerant in Wiltshire, &c. He died in 5 or 6 Hen. III. *Id.*

*John de Gestling*, who was a justicier in 9 Ric. I, acted regularly in that capacity in the first ten years of John's reign, and up to 4 Hen. III. He died about 1223. *Id.*

*Geoffery de Bocland* was a justicier from 7 Ric. I to 3 Hen. III; and in 5 Hen. III a justice itinerant in Hertfordshire. He died before Feb. 4, 1231. *Id.*

*Roger Huscari*, who had been a justicier in John's reign, continued such till 7 Hen. III, when he was sent to Ireland, and there had the next place to the chief justice. *Id.*

*Ralph Hareng*, who was a justicier so early as 10 John, was judicially employed from 1 to 8 Hen. III. He died about 1230. *Id.*

<sup>43</sup> *Simon de Insula* (or de L'isle) was

probably of the isle of Ely. Fines were levied before him as a justicier at Westminster, from 2 to 4 Hen. III; and he went as a justice itinerant into Essex, Hertford, Norfolk and Suffolk. Foss's Biogr. Jurid.

<sup>44</sup> A justicier at Westminster. In 4 Hen. III he was on a mission to France; in 7 Hen. III he and *Emericus de Sacy* were appointed to meet the king of Jerusalem on his landing in Kent. He was sheriff of Rutland from 2 to 12 Hen. III, and died about Octo., 1232, leaving several children by his wife Alice, daughter and heir of *Stephen de Gray*. *Id.*

<sup>45</sup> *Maurice de Andeley* (or Aundeley) who had, in 17 John, been sent to Northampton with *Simon de Pateshull* and others to hear a dispute as to presentation of the church of Oxenden, was in Trin. T., 1219 (3 Hen. III), a justice at Westminster, before whom fines were levied, and a justice itinerant in various counties; he performed such duty as late as 1230. *Id.*

*John de Bayeux* was, in 3 Hen. III, added to the justices itinerant for the counties of Cornwall, Devon, Somerset and Dorset. After inquiry into a charge against him, he was again selected as a justice itinerant in Devonshire in 1225; he had also appointments as justice of the forests and constable of the castle of Plimpton. He died in 1249. *Id.*



*de Cantilupe*,<sup>46</sup> mentioned in ch. 13, § 4, p. 244, *John Mare-*

*Henry de Cobbeham* was, in 3 Hen. III, appointed a justice itinerant into Sussex, Surrey, Middlesex and Kent; and, in 10 Hen. III, was on the commission to collect the quinzime there. He left three sons, each of whom occupied the judicial bench. *Id.*

*William de Cresse* was in 3 Hen. III, and again in 1225, a justice itinerant in Nottinghamshire and neighbouring counties. *Id.*

*Ralph de la Ferte* was, in 3 Hen. III, and several years afterwards, a justice itinerant in Cumberland and Westmoreland. *Id.*

*Matthew Fitz-Herbert* continued, for the first thirteen years of this reign, sheriff of Sussex, and acted as a justice itinerant in 3 Hen. III, and also in 11 Hen. III. He died in 1231.

*William Fitz-Roger* was, in 3 Hen. III, a justice itinerant for York and Northumberland. *Id.*

*Hugh Foliot* (abbot of Ramsey) was, in 3 Hen. III, a justicier at Westminster, and a justice itinerant. *Id.*

*Walter Foliot* was, in 3 Hen. III, a justice itinerant into Wiltshire, Hampshire, Berkshire and Oxfordshire; and, in 9 and 10 Hen. III, sheriff of the latter county. He died about June, 1228. *Id.*

*Ralph Gernum* is, in 3 Hen. III, described as a justice itinerant, and one before whom a fine was levied at Westminster. In 4 Hen. III he was twice sent over to Poitou; the last time to accompany the king's sister, Joanna, to England. He was, in 5 Hen. III, constable of Corfe castle, which he held for many years; in 7 and 8 Hen. III sheriff of Dorset county; and, in the following year, a justice itinerant for that county. He died in 1247. From a grandson, Geoffrey, descended chief justice Sir John Cavendish, a name taken from a lordship in Suffolk. *Id.*

*Thomas de Heydon*, from 3 to 11 Hen. III, a justicier at Westminster, and, on several occasions, a justice itinerant. *Id.*

*Robert de Neville*, an ecclesiastic, who, in John's reign, was an officer of the exchequer, was a justicier in 3 Hen. III. *Id.*

*Adam de Newmarket* (Novo Mercato) who, in 15 John, was imprisoned in Corfe castle, and in the next year was appointed with three others, and the sheriff of Yorkshire, to take an assize, was, under Hen. III, employed in collecting the quinzime in Yorkshire, and acted as a justice itinerant in 3, 9, 16, and 18 Hen. III, in various counties. *Id.*

*Walter de Pateshull* was, in 3 Hen. III, a justice itinerant for Bedfordshire and the neighboring counties. On the disgrace of Faukes de Breaute he was appointed sheriff of Bedfordshire and Buckinghamshire. Under the direction of him, and Henry de Braybroc, the captured judge, the castle of Bedford was demolished. He retained the sheriffalty for four years, and died in Aug. 1232. *Id.*

*Walter de Ripariis*, who, in 1 Hen. III, was one of those appointed to assess and receive the hidage of Berkshire, was, in 3 Hen. III, a justice itinerant in that county. *Id.*

*Jordan de Sackville* (or De Sankville) and his father were involved in the proceedings of the barons against King John, but, on the accession of Henry III, their forfeited lands were restored to them, and further favours conferred. Jordan is mentioned in 3 Hen. III as a justicier and a justice itinerant. *Id.*

*Benedict de Sansetun* was appointed March 26, 1204, to the office of precentor of St. Paul's, London, when it was first erected and endowed with the church of Sording; and he enjoyed it till he was raised to the bishopric of

*schall*<sup>47</sup> (or Marshall), *Walter Mauclerk*,<sup>48</sup> *Thomas de Muleton*,<sup>49</sup>

Rochester, in Dec., 1214. In 3 Hen. III, he was, at the head of the justices, appointed for the four home counties; and fines were levied at Westminster before them in that character. In 8 Hen. III he seems to have been acting as a regular justicier. He went on an embassy to France in Octo., 1225; died Dec. 21, 1226; and was buried in his cathedral. *Id.*

*James Le Sauvage*, who had been chaplain to Herbert Walter, archbishop of Canterbury, was on that prelate's death, in 1205 (besides being one of the executors of his will), nominated as custos of the archbishopric during the vacancy, and made by the king one of his own chaplains. He was rector of the church of St. Peter, at Hotham, or Ocham (probably Woking), in Surrey; and was joined to the justices itinerant of the home counties in 3 Hen. III (1219). *Id.*

*Richard de Seinges* was, in 3 Hen. III, a justicier before whom fines was levied at Westminster. In 1226 he was sent with other justiciars to try certain malefactors in Norfolk. *Id.*

*Ralph Tablir* (or Tabbett) was, in that year (3 Hen. III), also a justice itinerant in the home counties. *Id.*

*William de Trumpington* (so called from a place in Cambridgeshire), who had forfeited his lands by joining the barons against King John, had the same restored at the beginning of the next reign, and was, in 3 Hen. III, a justice itinerant in his county and neighbouring shores. *Id.*

*Maurice de Turvill*, who had been in King John's service, was, in 1219, a justice itinerant in Wiltz, Hants, Berks and Oxford, and was one of three coroners of Gloucester county who, in 1225, were superseded '*propter debilitatem.*' *Id.*

*Walter de Verdun*, who had been in

King John's service, was, in 1 Hen. III, one of the escheators of Lincolnshire, and in the next year had custody of the tower of London. In 3 Hen. III he was sheriff of Essex and Hertfordshire, and a fine was levied before him and his associates, justices itinerant at Westminster. He performed like duties in 9 Hen. III for Oxford county. Between the two last dates he acted in a diplomatic capacity, being sent to Rome in 4 Hen. III, and in the next year to Poitou. He died in 1229. *Id.*

*William de Vernon*, a knight of Lancaster county, was, in 3 Hen. III, a justice itinerant for the northern counties; and, in 1225, in Nottingham and Derby. *Id.*

*John de Wigenholt*, being in 15 John sheriff of Berkshire, was appointed constable of Wallingford castle, and held both offices during the remainder of that reign and part of the next. In 17 John he was presented to the church of Stohes in the diocese of Lincoln, and became one of the royal chaplains. In 3 Hen. III (1219) he was a justice itinerant in the counties of Wilts, Hants, Oxford and Berks. In 11 Hen. III a mandate was addressed to him as a justice of the forests. *Id.*

*Laurence de Wilton*, an ecclesiastic, was, in 3 Hen. III, a justice itinerant for Cumberland, Westmoreland and Lancashire. Previously he is noticed in 7 John as having obtained, on a fine of two palfreys, the king's charter, confirming to him a stone house in Cunning street, York, which Robert de Stuteville had granted to him and his heirs at the annual rent of a pair of gilt spurs. *Id.*; citing *Rot. Chart.* 163.

*John de Winchestede* stands the last of six justices itinerant, before whom a fine was levied at Westminster in 3 Hen. III. *Id.*

*Richard Poore*,<sup>60</sup> bishop of Chichester, Salisbury and Durham, *Philip*

<sup>46</sup> The family, so called from the original Champ de Loup, or Campus Lupi, followed the Norman conqueror. On Henry's accession, William and his son assisted in the siege of Montsorel, in Leicestershire, and in raising that of Lincoln. In 2 Hen. III he was again sheriff of Warwickshire and Leicestershire, with custody of the castle of Kenilworth, where he fixed his chief residence; in the next year he was a justice itinerant in Bedfordshire and neighbouring counties. He died in April 1238. *Id.*

<sup>47</sup> Great grandson of Gilbert, marshal of Henry I, and nephew to *William Mareschall*, earl of Pembroke. In the previous reign Falaise castle was committed to his keeping. Next year he was steward of his uncle's lands and castles in Leinster, Ireland. He obtained from King John the grant of the office of marshal of Ireland, and was there with him in 12 and 14 John. He had, in the latter year, custody of the castles of Whitchurch and Screward, in Shropshire; and in the next year the guardianship of the Marches of Wales, and also the sheriffalty of Lincoln county. In 17 John he held the sheriffalty in Norfolk and Suffolk for a short time, and also in Dorset, Somerset and Worcester, with charge of the castles of all these counties. In Henry's reign he not only joined the army for the relief of Lincoln, but as stated in § 2, p. 278, was employed in destroying the French armament in August, 1217. He was then made sheriff of Hampshire and constable of the castle of Devizes, and was appointed chief justice of the forests, which office he held for several years. He was in 3 Hen. III a justice itinerant in Lincoln, Nottinghamshire and Derby, and is mentioned as taking the acknowledgment of a fine in 12 Hen. III. He

was afterwards employed in various embassies for the king, whose favour he retained till his death, which occurred about June, 1235. *Id.*

<sup>48</sup> He was one of King John's chaplains, and had the presentation to various churches. In 6 John he was one of the bailiffs of Lincoln county; he acted in 14 John in the Exchequer in Ireland; and in 16 John was an ambassador to Rome, to urge the royal complaints against the barons. He was in 3 Hen. III a justice itinerant into the counties of Lincoln, Nottingham and Derby; and in 5 Hen. III a justice of the forest; and afterwards held for several years the offices of sheriff of Cumberland and constable of Carlisle. He was elected bishop of Carlisle in August, 1223, and was sent on special embassies abroad several times before July, 1232, when he was raised to the office of treasurer. *Id.* See post, § 14.

<sup>49</sup> Mentioned in ch. 13, § 3, p. 240. After the accession of Henry III his castle and other possessions were restored to him. In 3 Hen. III (1219) he was appointed a justice itinerant in the counties of Cumberland, Westmoreland and Lancaster. Within five years afterwards he was raised to the bench at Westminster, on which he continued to sit until near the close of his life; the fines acknowledged before him extending from Easter 1224 to Easter 1236. *Id.*

<sup>50</sup> Born at Tarent, in Dorsetshire; made dean of Salisbury in 1197 (8 Ric. I); raised to the bishopric of Chichester Jan. 7, 1215 (16 John); translated to Salisbury about June, 1217 (1 Hen. III). As bishop of Salisbury, he was at the head of those who, in 3 Hen. III (1218), were justices itinerant for Wiltshire, Hampshire, Berkshire and Oxfordshire. He undertook the removal of the cathedral church from Old Sarum; com-

de Ulecot,<sup>51</sup> Robert de Veteri Ponte,<sup>52</sup> and Josceline de Wells, bishop of Bath and Wells.<sup>53</sup>

7. *Of the pope's command, in 1223, that Henry, though young, should have the government of the kingdom; and the chancellor should use the seal according to the king's pleasure. How this mandate operated as between Hubert de Burgh on one side and Bishop Peter and Faukes de Breaute on the other.*

Henry's boyhood is mentioned in § 1, note 1, p. 276. In April, 1223, upon suggestions that he "has acquired a manly mind," and that "his prudence exceeds his age, so that he seems to make up in the virtue of discretion what he wants in number of years," Pope Honorius wrote letters as below;<sup>54</sup> and to the chancellor thus:

encing in 1219 the present magnificent building. To the progress of its erection he devoted nine years, but its completion, which occupied 30 years, was left to his successors, as he was advanced to the see of Durham in May, 1228. He presided there for nine years, and died April 15, 1237, with the character of a man of extraordinary sanctity and profound science. *Id.*

<sup>51</sup> Mentioned in ch. 13, § 3, p. 241. After the accession of Henry III, Philip de Ulecot was required to give up the castle of Mitford to Roger Bertram; but the favor of government was soon restored to Philip, for in the next month the manor of Corbrig was assigned for his support while in the king's service; and other grants to him followed. He was, in 3 Hen. III, a justice itinerant in the three northern counties; and, in the next year, seneschal of Poitou and Gascony; in which service he died. In a mandate of Nov. 2, 1220, announcing his death to the sheriff of Northumberland, he is called '*dominus tuus*,' showing that he still continued governor of the northern district. *Id.*

<sup>52</sup> Mentioned in ch. 13, § 3, p. 241. He was at the siege of the castle of Montsorel, and assisted in the relief of Lincoln. In 3 Hen. III he was sheriff of

Cumberland, and a justice itinerant in York and Northumberland; he performed like duty in Yorkshire in 10 Hen. III. Dugdale adds, that fines were levied before him in the following year. He died in 12 Hen. III, previous to March 2 (1228). *Id.*

<sup>53</sup> Mentioned in ch. 13, § 4, p. 244. He appears in 3 Hen. III at the head of the justices itinerant for the counties of Cornwall, Somerset, Devonshire and Dorset. He presided over his see for 37 years, during which he not only united with his brother Hugh, bishop of Lincoln, in founding the hospital of St. John, in Wells, his native place, but rebuilt the beautiful cathedral there, and made several liberal endowments to his church. He died Nov. 9, 1242, and was buried in the choir of his cathedral under a tomb he had erected. *Id.*

<sup>54</sup> Directed to the Justiciar of England and William de Bruwera, commanding "that henceforward they commit to him the full and quiet government of his kingdom:" To the Earl of Chester commanding the like, and that he resign, "and procure to be resigned by others, the lands and castles" held "in the name of guardianship:" To the Bishop of Winchester in the same words. 1 State Tr. 17, 18.

"By this apostolic writing we command, for as much as you have the seal of the said king, and the custody thereof, that from henceforward you will use the same according to his good pleasure, and with respect to it only follow and obey him; and for the future cause no letters to be sealed with the royal seal, but according to his will."<sup>55</sup>

At the close of the year, Hubert, having just completed a successful campaign in Wales, thought himself strong enough to act upon this mandate; and the earl of Chester, William of Aumâle and Faukes de Breaute attempted to anticipate him. Disappointed in a design for seizing the Tower of London, they encamped at Waltham, and sent to the king, demanding the dismissal of the justiciar. A discussion took place in the royal presence, Hubert answering for himself and denouncing the bishop of Winchester as the secret prompter of the disturbance. Langton again mediated, and a formal reconciliation took place at Christmas at Northampton. Six months after Faukes de Breaute<sup>56</sup> drew down upon himself the final storm."

8. *Appointments of justiciars and justices itinerant in 4 and 5 Hen. III; and in 7 and 8 Hen. III. In the latter year (1224), Thomas de Muleton and Warin Fitz-Joel were sent with Martin de Paieshull and Henry de Braybroc as justices to take assizes at Dunstable.*

In addition to those already named as justiciars and justices itinerant, there were appointments in 4 and 5 Hen. III;<sup>57</sup> and in 7 and 8

<sup>55</sup> *Id.*, 18.

<sup>56</sup> Stubbs's Const. Hist., ch. 14, pp. 34, 35. This clever adventurer has been mentioned in ch. 13, § 3, p. 240. Whether born in Normandy or in Middlesex, he had devotedly attached himself to John, who repaid his services with lavish magnificence. Sherifdoms, wardships, escheats, castles, were showered upon him; he was married to the countess of Wight and Devon; was executor of John's will; a chief counsellor in Henry's court, and sheriff of six counties; and frequently acted as a justice itinerant. He, no doubt, had the confidence of Peter des Roches, and held the strings of the confederation against Hubert. *Id.*; Foss's Biogr. Jurid.

<sup>57</sup> *Robert de Lexington*, who, in 16 John, had been presented to a prebend

in the church of Southwell, and acted as custos of the archbishopric of York, took in 4 Hen. III the acknowledgment of a fine; afterwards he acted as a justicier at Westminster and in the country until shortly before he died. Foss's Biogr. Jurid.

*Warin de Granden* was one of four justices appointed in 4 Hen. III to deliver the jail of Hereford. *Id.*

*John de Monmouth* was another of the four. In the next year he, with other associates, visited that county and eight others in the same capacity. *Id.*

*Ralph Musard*, sheriff of Gloucester, from 17 John till the end of 9 Hen. III, was several times, from 5 to 11 Hen. III, a justice itinerant for various counties. His second wife was Isabella, widow of John de Neville; for marrying whom,

Hen. III.<sup>58</sup> In the latter year (1224), *Thomas de Muleton*<sup>59</sup> and *Warin Fitz-Joel*<sup>60</sup> were sent with *Martin de Pateshull* and *Henry de Braybroc* as justices itinerant to take assizes for the counties of Buckingham and Bedford at Dunstable.

9. *Though Lord Coke may be inaccurate in saying of 'Martinus de Pateshull' that he was chief justice of the common pleas in 1 Hen. III, yet he (Martinus) was on the bench as early as 1217; and afterwards, till his death, was on judicial duty; he was learned, wise and a hard worker. Of the judgment at Dunstable, in 1224, against Faukes de Breaute.*

Lord Coke may be inaccurate in saying of '*Martinus de Pateshull*' that he "was by letters patent constituted chief justice of the court of common pleas in the first year of H. III."<sup>61</sup> For, according to Mr. Foss, "even if the division of the courts had then taken place, which

without the king's license, a pardon was procured by a fine of 100 marks. His death was in 14 Hen. III. *Id.*

*Simon*, the tenth abbot of Reading, who, in 16 John, was sent on a mission to France, was, in 4 Hen. III, in the commission of inquiry issued as to the forests, and for a short time had the custody of the castle of Devizes. In 5 Hen. III, he and *Randolph*, abbot of Evesham, were at the head of the justices itinerant in nine counties. Simon died in Feb. 1226, and Randolph died Jan. 16, 1229. *Id.*

*William de Tametone* was, in 4 Hen. III (after the peace with Prince Louis), commissioned with *Walter Mauclerk* and others, to enquire by twelve men into the state of the castle of Pickering, in Yorkshire; there are two instances in which an assize was directed to be heard before him. In the general appointment of justices itinerant, in 10 Hen. III (1226), he was selected for Northumberland. *Id.*

*Robert de Vere*, third earl of Oxford, seems to have been a justicier before

whom fines were acknowledged in 4 Hen. III; next year he was at the head of the itinerant justices in Hertfordshire. He died in Octo., 1221. *Id.*

<sup>58</sup> *Geoffrey le Sauvage* had fines levied before him at Westminster in 7 Hen. III, and thenceforth till Easter, 10 Hen. III. In Wiltshire he was custos of Savernake forest in 7 Hen. III, and a justice itinerant in 9 Hen. III. *Id.*

*Ralph de Neville*, chancellor of Chichester, and bishop of that see, sat in 1224 as a justicier in Shropshire, with *William de Houbrug*. *Id.*

<sup>59</sup> Mentioned in ch. 13, § 3, p. 240; and in this ch., § 6, p. 286, and note 49.

<sup>60</sup> In 1225 he went as justice itinerant into Cornwall; a fine was levied before him in Easter. In October he was with Thomas de Muleton on a special commission in Norfolk, to enquire into robberies committed on merchants of Norway; in the following January he acted as a justice itinerant in Hampshire and other counties. *Id.*

<sup>61</sup> 8 Rep., p. xv. and xvi. of preface; 2 Inst. 23.

is very doubtful, there is no other evidence that he was at the head of either branch." But it appears that "very soon after the accession of Henry III, he was raised to the bench, for his name appears in 1217, not only at Westminster, when a fine was levied there, but also as a justice itinerant in York and Northumberland, and in other counties;" and "from this time until the end of his life he was actively engaged in judicial duties, scarcely a year occurring in which he was not sent on various itinera."<sup>62</sup> Lord *Coke* may be quite right in esteeming him as "a man of great wisdom and exceeding well learned in the laws of this land."<sup>63</sup> In his judicial office he acquired reputation<sup>64</sup> with this character: '*Vir miræ prudentiæ, et legum regni peritissimus.*'<sup>65</sup>

He and his three associates at Dunstable in 8 Hen. III (1224) fined Faukes de Breaute £100 on each of more than thirty verdicts found against him for violent seizure of property of his neighbours.<sup>66</sup>

10. *Instead of submission to the judgment in 1224, there was an attempt to seize the judges; and one of them was taken to Bedford castle. Under the king's order the castle was besieged; the judge released; Faukes's brother, with several other knights hanged; the castle destroyed; and Faukes banished the realm. His fall operated to strengthen Hubert and weaken the bishop of Winchester.*

Faukes's brother, William, who had been left in command, endeavored, with a band of his followers, to seize the judges. All of them

<sup>62</sup> Foss's Biog. Jurid.

<sup>63</sup> 8 Rep., p. xv. and xvi. of preface.

<sup>64</sup> From 1225, when he stands the first of those who were appointed, he is in every subsequent commission mentioned in the same prominent position. The fourth report of the public records (App. ii, 161) gives an amusing testimony of his activity in performing his legal functions. In a letter to the authorities, a brother justicier, appointed to go the York circuit with him, prays to be excused from the duty, 'for,' says he, 'the said Martin is strong, and in his labour so sedulous and practised, that all his fellows, especially *W. de Ralegh* and

the writer' (whose name does not appear), 'are overpowered by the labour of Pateshull, who works every day from sunrise until night.' The writer therefore prays to be eased of his office, and allowed to go quietly to his church in York county, to which he had been lately presented. Pateshull was appointed in 1226 archdeacon of Norfolk, and, in 1228, dean of St. Paul's, London, of which he had previously been a canon. He died Nov. 14, 1229. Foss's Biogr. Jurid.

<sup>65</sup> *Id.*; citing Fuller's quotation from Florilegus.

<sup>66</sup> *Id.*

escaped except *Henry de Braybroc*. He was captured and taken to Bedford castle, where he was treated with indignity. His wife, Christina, daughter of Wiscard Ledet, immediately appeared before the council then sitting at Northampton. Upon her information, the king (with whom Hubert was) promptly took active measures. The king's demand for the release of the incarcerated judge being refused, a regular siege of Bedford castle commenced June 16. So stoutly was the castle defended, that it was not till August 14 that the garrison were forced to submit, when, *so high was the king's indignation, that he ordered*<sup>67</sup> Faukes's brother, William, with several other knights (twenty-four, it is said), to be hanged; which was done on the spot. *Henry de Braybroc* was then released. He was afterwards employed to see the castle totally destroyed,<sup>68</sup> and the materials distributed according to the king's order.<sup>69</sup> Faukes himself escaped into Wales. But afterwards he gave up into the king's hands all his property and possessions, and placed himself at the royal mercy. Upon a hearing in March, 1225, the nobles, preserving his life, in consideration of his former services, banished him the realm forever.<sup>70</sup>

"The importance of his position, and the great constitutional significance of his humiliation, is shown by the fact that the earls and barons, as well as prelates, of the whole province of Canterbury, joined to grant a carucage towards the expenses of the struggle, and that the pope regarded him as worthy of his protection."<sup>71</sup> His fall

<sup>67</sup> From this statement, which is according to Mr. Foss and Mr. Stubbs, that of Mr. Green varies. He says: "*The stern justice of Stephen Langton hung the twenty-four knights and their retainers, who formed the garrison before its walls.*" Green's Short Hist., ch. 3, § 5, p. 166. In his more recent work is mentioned "the stern justice" (not of Stephen Langton, but) "*of Hubert.*" Green's Hist. of Engl. Peop., book 3, ch. 2, p. 253, of vol. 1.

<sup>68</sup> *Walter de Pateshull*, the sheriff of Bedfordshire and Buckinghamshire, had part in the work of demolition. *Id.*

<sup>69</sup> He was appointed justice itinerant in the following year for the same counties;

and, in 10 Hen. III, for the counties of Lincoln and York, in the former of which his wife had property. He is mentioned as a '*justiciarius de banco*' in 11 Hen. III, and two years afterwards. He died before June, 1234. Foss's Biogr. Jurid.

<sup>70</sup> *Id.*

<sup>71</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 35, 36; 3 Lingard's Engl., ch. 2, pp. 85, 86. Proceeding to Rome, Faukes de Breaute induced the pope to interfere with King Henry on his behalf, but Henry was inexorable. The life of Faukes was, about 1228, terminated by poison administered in a fish at St. Ciriac. Foss's Biogr. Jurid.



crowned for the moment the power of Hubert; it extinguished the influence of the foreigners who had been imported by John, and reduced the bishop of Winchester to political insignificance."<sup>72</sup>

II. *Re-issue, in 9 Hen. III (1225), of the charters. Lord Coke's exposition. John's Magna Carta compared with this re-issue by Henry.*

To provide for expenses incurred and contemplated, there being needed a larger supply than usual, the justiciar, at the Christmas court of 1224, asked a fifteenth of all moveables; and was met by a petition for confirmation of the charters.<sup>73</sup> They were re-issued in February, 1224-5, with no material alteration,<sup>74</sup> though with a change in the enacting words;<sup>75</sup> and the mention of the final clause.<sup>76</sup>

The 11th of that month is the date of the 'Magna Carta' of Henry, with which Lord *Coke* begins 'the second part of the Institutes of the Laws of England;'<sup>77</sup> in the exposition whereof, he says: "This charter is declaratory of the ancient law and liberty of England, and therefore no new freedom is hereby granted (to be discharged of lawful tenures, services, writs and aids), but a restitution of such as lawfully they had before, and to free them of that which had been usurped and encroached upon them by any power whatsoever."<sup>78</sup>

The Magna Carta of John should be compared with the re-issue

<sup>72</sup> 2 Stubbs's Const. Hist., ch. 14, p. 36.

<sup>73</sup> *Id.*, pp. 36, 37.

<sup>74</sup> Select Charters, pp. 344, 345. In the statutes of the Realm (edi. 1810), vol. 1, p. 22 to 25, is 'Magna Carta Regis Henrici III, xi die Februarii A. R. nono A. D. MCC. XXIV-V.' Between printed pages 22 and 23 is 'Magna Carta, 9 Hen. III in Archivis Eccl. Cathed. Dunelm Asservata.' On pages 26 and 27 is 'Carta de Foresta Regis Henrici III, x die Februarii A. R. nono A. D. MCC. XXIV-V'.

<sup>75</sup> The substitution of the 'spontanea et bona voluntate nostra' for the 'consilio' of the former charters. The magnates, whose names had been before recounted as counselling and consenting, now appear as witnesses. Select Char-

ters, p. 344; 2 Stubbs's Const. Hist., ch. 14, p. 37.

<sup>76</sup> Which specifies the granting of the aid as the price of the present concession. *Id.* Now was "established the principle, so fruitful of constitutional results, that redress of wrongs precedes a grant to the crown." Green's Short Hist., ch. 3, § 5, p. 166; Hist. of Engl. Peop., book 3, ch. 2, p. 254 of vol. 1.

<sup>77</sup> 2 Inst., p. 1 to p. 78.

<sup>78</sup> *Id.*, p. 2. Then, of chapter 2, he says: "This chapter of Magna Charta is but a restitution and declaration of the ancient common law." *Id.*, p. 8. See, likewise, as to ch. 20, p. 34, ch. 21, p. 35, ch. 26, p. 43, ch. 27, p. 44, ch. 29, p. 51, ch. 31, p. 64.

of Henry. There being a difference in the number of clauses or chapters, the comparison may be as follows: of 1, 2, 3; 4, 5 and 6, of the former (or in the translation 1, 2, 3, 4, 5, 6 and 7), with 1, 2, 3, 4, 5 and 6, of the latter; of 7, 8 and 9, of the former (or in the translation, 8, 9, 10 and 11), with 7 and 8 of the latter; of 11, 12, 13, 14, 15 and 16 of the former (or in the translation, 12, 13, 14, 15, 16, 17, 18, and 19), with 7, 8, 9, 10 and 37 of the latter; of 17 of the former (or in the translation, 20),<sup>79</sup> with 11<sup>80</sup> of the latter; of 18, 19, 20, 21 and 22 of the former (or in the translation, 21,<sup>81</sup> 22, 23, 24, 25), with 12,<sup>82</sup> 13 and 14 of the latter; of 24, 26 and 27 of the former (or in the translation, 27, 29,<sup>83</sup> and 30) with 17 and 18<sup>84</sup> of the latter; of 28, 29, 30,

<sup>79</sup> *Ante*, p. 255.

<sup>80</sup> "Common Pleas shall not follow our court, but shall be holden in some place certain." 2 Inst. 21.

Ld. Coke says: "Before this statute common pleas might have been holden in the king's bench, and all original writs returnable into the same bench; and because the court was holden *coram rege*, and followed the king's court, and removeable at the king's will, the returns were *ubicunque fuerimus*, &c.; whereupon many discontinuances ensued, and great trouble of jurors, charges of parties and delay of justice: for these causes this statute was made." 2 Inst. 21, 22. All this may be so; and yet Ld. Coke may be inaccurate in his "word or two of the antiquity of the court of common pleas." (*Id.*, pp. 22, 23, and pp. xiv, xv, of preface to 3 Rep.) For it is believed that this court, *so called*, did not exist before Magna Carta, although "before this statute common pleas might have been holden in the king's bench." See Francklin's Annals, edi. 1681, p. 21.

<sup>81</sup> *Ante*, p. 255.

<sup>82</sup> "Assises of novel disseisin and of mort d'ancestor shall not be taken but in the shires, and after this manner: if we be out of this realm, our chief justicers shall send our justicers through every county *once in the year*, which, with the

knights of the shires, shall take the said assizes in those counties; and those things that at the coming of our foresaid justices, being sent to take those assizes in the counties, cannot be determined, shall be ended by them in some other place in their circuit; and those things which, for difficulty of some articles, cannot be determined by them, shall be referred to our justicers of the bench, and there shall be ended."

Ld. Coke observes that, in *Glanville's* time, and before, the king's justices were called *justiciae*, the returns of writs being *coram justiciis meis*, so as the king's justices were anciently called *justitia*, for that they ought to be not only *justi* in the concrete, but *ipsa justitia* in the abstract; and Ld. Coke adds that, "since that time, as by this great charter, in many places it appeareth they are called *justitiiarii a justitia*." 2 Inst. 26.

<sup>83</sup> *Ante*, p. 256.

<sup>84</sup> "If any that holdeth of us lay fee do die, and our sheriff or bailiff do show our letters patents of our summon for debt, which the dead man did owe to us, it shall be lawful to our sheriff or bailiff to attach and enroll all the goods and chattels of the dead, being found in the said fee to the value of the same debt, by the sight and testimony of lawful men, so that nothing thereof shall be taken away until we be clearly paid off the

31 (or in the translation 31, 32, 33 and 34<sup>85</sup>), with 19, 20, 21,<sup>86</sup> and 32 of the latter; of 32, 33, 34, 35, 36 and 37 (or in the translation, 35, 36, 37, 38, 39,<sup>87</sup> 40 and 41), with 22, 23, 24, 25, 26<sup>88</sup> and 27 of the latter; of 38

debt; and the residue shall remain to the executors to perform the testament of the dead; and if nothing be owing unto us, all the chattels shall go to the use of the dead, saving to the wife and children their reasonable parts." 2 Inst. 32.

<sup>85</sup> Mentioned *ante*, p. 256, *note*.

<sup>86</sup> (In 2 Inst., pp. 33, 34.) 19. "No constable, nor his bailiff, shall take corn or other chattels of any man if the man be not of the town where the castle is, but he shall forthwith pay for the same unless that the will of the seller was to respite the payment; and, if he be of the same town, the price shall be paid unto him within forty days." (See also Stat. of Westm. 1, ch. 7, in 2 Inst., pp. 170, 171).

20. "No constable shall distrain any knight for to give money for keeping of his castle, if he himself will do it in his proper person, or cause it to be done by another sufficient man, if he may not do it himself for a reasonable cause. And if we do lead or send him in an army he shall be free from castle ward for the time that he shall be with us in fee in our host, for the which he hath done service in our wars."

21. "No sheriff nor bailiff of ours, or any other, shall take the horses or carts of any man to make carriage, except he pay the old price limited—that is to say, for carriage with two-horse, ten pence a day; for three-horse, fourteen pence a day. No demesne cart of any spiritual person or knight, or any lord, shall be taken by our bailiffs; nor we, nor our bailiffs, nor any other, shall take any man's wood for our castles, or other our necessities to be done, but by the license of him whose the wood is."

And this branch "hath (as hath been said) been confirmed and commanded to be put in execution at 32 sessions of parliament. And so it was resolved by all the judges of England and barons of the exchequer, Mich. 2, Jac. Reg., upon mature deliberation; and that the king's purveyor could take no timber growing

upon the inheritance of the subject, because it was parcel of the inheritance, no more than the inheritance itself: whereof the king and counsel being informed, the king, by his proclamation, by advice of his counsel under the great seal, 23d April, anno 4, declared the law to be in these words: first, when we were informed that some inferior ministers had presumed to go so far beyond their commission, as they have adventured, not only to take timber-trees growing, which being parcel of our subjects' inheritance, was never intended by us to be taken without the good will and full consent of the owners, but have accustomed also to take greater quantities of provisions for our house and stable than ever came, or were needful to our use, &c."—"and divers purveyors were, according to the said resolution of the judges, punished in the Star-chamber for purveying of timber growing, without the consent of the owners." Ld. Coke concludes: "The common law hath so admeasured the prerogative of the king as he cannot take nor prejudice the inheritance of any, and (as hath been said) a man hath an inheritance in his woods." 2 Inst. 35, 36. See also Stat. Westm. 1, c. 32, p. 223 to 225.

<sup>87</sup> Mentioned, *ante*, p. 256, *note* 88.

<sup>88</sup> "Nothing, from henceforth, shall be given for a writ of inquisition, nor taken of him that prayeth inquisition of life, or of member, but it shall be granted freely, and not denied." 2 Inst. 42.

Ld. Coke states that a writ of inquisition "is the writ *de odio et atia*, anciently called *breve de bono et malo*, and here of life and member, which the common law gave to a man that was

(or in the translation 42<sup>89</sup>), with 28<sup>90</sup> of the latter; of 39 and 40 (or in the translation 43 and 44<sup>91</sup>) with 29 of the latter, which is as follows:

"No *freeman*<sup>92</sup> (1) shall be *taken* (2) or imprisoned, or be disseised of his freehold or *liberties* (3) or free customs, or be outlawed or

imprisoned, though it were for the most odious cause, for the death of a man, for the which, without the king's writ, he could not be bailed, yet the law favouring the liberty and freedom of a man from imprisonment, and that he should not be detained in prison until the justices in eire should come at what term he was to be tried, he might sue out this writ of inquisition directed to the sheriff." After mentioning that "in this writ four things are to be observed," and stating what they are, *Ld. Coke* further says, that "this writ was taken away by a later statute, viz: in 28 E. III"—"but within 12 years after this statute, it was enacted, as often hath been said, that all statutes made against *Magna Charta* (as the said act of 28 E. III was) should be void, whereby the writs of *odio et atia, et de ponendo in balium* are revived, and so in like cases upon all the branches of *Magna Charta*. And therefore the justices of assize, justices of *oyer and terminer*, and of jail delivery, have not suffered the prisoner to be long detained, but at their next coming have given the prisoner full and speedy justice by due trial, without detaining him long in prison." 2 Inst. 42, 43. See also Stat. of Westm. 1, c. 11, in 2 Inst. 177.

<sup>89</sup> Mentioned, *ante*, p. 256.

<sup>90</sup> "No *bailiff*, from henceforth, shall put any man to his open law, nor to an oath, upon his own bare saying without faithful witnesses brought in for the same." 2 Inst. 44.

*Ld. Coke* says: "It appeareth that under this word *balivus*, in this act comprehendeth every justice, member of the

king, steward and bailiff." *Id.* In another place he uses this language: "Some have said that *balivus* in this statute signifieth any judge; for the law must be waged and made before the judge. And this statute (say they) extends to the courts of common pleas, king's bench, &c., for they must bring with them *fideles testes*, &c., and so hath been the usage to this day. But I have perused a very ancient and learned reading upon this statute; and the reader taketh it, that at the common law, before this statute, he that would make his law in any court of record, must bring with him *fideles testes*. And this opinion herein is warranted by *Glanvil*, who wrote in the reign of Henry the second. But the reader holdeth that, in the courts which were not of record, as the county court, the hundred court, the court baron, &c., there the defendant, without any faithful witnesses, might, before this statute, have made his law, for remedy whereof this act was made; and therefore (saith he) the statute extendeth to the judges of such courts as are not of record." Co. Lit., 168 b.

<sup>91</sup> *Ante*, p. 256, and note 89.

<sup>92</sup> (1.) *Liber homo* doth extend to both sexes, men and women. 2 Inst. 45.

(2.) "That is, restrained of liberty by petition or suggestion to the king, or to his council, unless it be by indictment or presentment of good and lawful men, where such deeds be done." 2 Inst. 46.

(3.) This word *libertales* signifieth—1. "The laws of the realm, in which respect this charter is called *charta libertatum*." 2. "It signifieth the freedoms that the subjects of England have;

*exiled*, (4) or any otherwise *destroyed*; (5) nor will we pass upon him or condemn him but by *lawful* (6) judgment of his *peers* (7) or by the

for example, the company of the merchant tailors of England having power by their charter to make ordinances, made an ordinance that every brother of the same society should put the one-half of his clothes to be dressed by some cloth worker free of the same company, upon pain to forfeit xs. &c.; and it was adjudged that this ordinance was against law, because it was against the liberty of the subject, for *every subject hath freedom to put his clothes to be dressed by whom he will, et sic de similibus*; and so it is if such or the like grant had been made by his letters patents."—"So likewise, and for the same reason, if a grant be made to any man to have the sole making of cards, or the sole dealing with any other trade, that grant is against the liberty and freedom of the subject that before did or lawfully might have used that trade, and consequently against this great charter. Generally all monopolies are against this great charter, because they are against the liberty and freedom of the subject, and against the law of the land." 2 Inst. 47; also *Donate's case*, *Id.*, 61; and resolution mentioned, p. 62; and *Ld. Coke's* conclusion, p. 63, "that all monopolies concerning trade and traffic are against the liberty and freedom declared and granted by this great charter."

(4.) "The king cannot send any subject of England against his will to serve him out of his realm, for that should be an exile, and he should *perdere patriam*; no, he cannot be sent against his will into Ireland, to serve the king as his deputy there, because it is out of the realm of England; for if the king might send him out of this realm to any place, then, under pretence of service, as ambassador or the like, he might send him into the furthest part of the world, which being an exile, is prohibited by

this act. And albeit it was accorded in the upper house of parliament anno 6 E. III nu. 6, that such learned men in the law, as should be sent as justices, or otherwise, 'to serve in Ireland, should have no excuse, yet that being no act of parliament, it did not bind the subject.' 2 Inst. 47, 48, where Sir *Richard Pembrugh's* case (in 44 E. III) is cited.

(5.) "Every oppression against law, by colour of any usurped authority, is a kind of destruction, for *quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud*; and it is the worst oppression that is done by colour of justice. It is to be noted that to this verb, *destruatur*, are added *aliquo modo*, and to no other verb in this chapter, and therefore, all things, by any manner of means, tending to destruction, are prohibited: as if a man be accused or indicted of treason or felony, his lands or goods cannot be granted to any; no, not so much as by promise, nor any of his lands or goods seized into the king's hands, before attainder."—"The party ought to live of his own until attainder." 2 Inst., 48.

(6.) "The lords ought to hear no evidence but in the presence and hearing of the prisoner. 2. After the lords be gone together to consider of the evidence, they cannot send to the high steward to ask the judges any question of law but in the hearing of the prisoner, that he may hear whether the case be rightly put, for *de facto jus oritur*; neither can the lords, when they are gone together, send for the judges to know any opinion in law, but the high steward ought to demand it in court, in the hearing of the prisoner. 3. When all the evidence is given by the king's learned counsel, the high steward cannot collect the evidence against the prisoner, or in any sort confer with the lords touching

*law of the land* (8). We will *sell to no man* (9), we will not *deny or defer* (10) to any man, either *justice or right*." (11) 2 Inst., 45.

The comparison may be of 41 and 42 (or in the translation 45 and 46), with 30 of the latter;<sup>93</sup> of 43 (or in the translation, 47), with 31; of 46 (or in the translation, 50), with 33; of 54 (or in the translation, 59), with 34.

Chapter 35, of 9 H. III, is as follows:

their evidence, in the absence of the prisoner, but he ought to be called to it; and all this is implied in this word *legale*." 2 Inst., 49.

(7.) "This trial by peers was very ancient." 2 Inst., 50. "Verdict of his equals, that is, men of his own condition." *Id.*, 46.

(8.) That is, by the common law, statute law, or custom of England; and these words, *per legem terra*, do refer to all the precedent matters in this chapter. 2 Inst., 46 and 51.

By the due course and process of law. 2 Inst., 46. "That is, by indictment or presentment of good and lawful men, where such deeds be done in due manner, or by writ original of the common law." *Id.*, 50. "But it is to be understood that process of law is two-fold, viz.: By the king's writ, or by due proceeding and warrant, either in deed or in law, without writ." *Id.*, 51 to 55.

(9.) "This is spoken in the person of the king, who, in judgment of law, in all his courts of justice is present." 2 Inst., 55.

(10.) "These words have been excellently expounded by latter acts of parliament, that by no means common right or common law should be disturbed or delayed; no, though it be commanded under the great seal or privy seal, order, writ, letters, message or commandment whatsoever, either from the king, or any other; and that the justices shall proceed as if no such writs letters, order, message or other commandment, were

come to them." 2 Inst., 55, 56.

(11.) *Iustitiam vel rectum*. "Neither the end, which is justice, nor the mean whereby we may attain to the end."—" *Recta linea est index sui, et obliqui*, hereby the crooked cord of that which is called discretion, appeareth to be unlawful, unless you take it as it ought to be, *discretio est discernere per legem quod sit justum*. It is called right, because it is the best birth-right the subject hath, for thereby his goods, lands, wife, children, his body, life, honour and estimation are protected from injury and wrong: *major hæreditas venit uni culq; nostrum à jure, et legibus quam à parentibus*." 2 Inst., 56.

<sup>93</sup> "All merchants (if they were not openly prohibited before) shall have their safe and sure conduct to depart out of England, to come into England, to tarry in and go through England, as well by land as by water, to buy and sell without any manner of evil tolls, by the old and rightful customs, except in time of war. And if they be of a land making war against us, and be found in our realm at the beginning of the wars, they shall be attached, without harm of body or goods, until it be known unto us or our chief justice, how our merchants be treated there in the land making war against us; and if our merchants be well treated there, theirs shall be likewise with us." 2 Inst., 57.

As to merchant strangers in amity, "the prohibition intended by this act, must be by the common or public council of the realm, that is, by act of parliament." 2 Inst., 57.

"No county court from henceforth shall be holden but from month to month; and where greater time has been used there shall be greater: nor any sheriff, or his bailiff, shall keep *his turn in the hundred*<sup>94</sup> but twice in the year; and nowhere but in due place and accustomed; that is to say, once after Easter, and again after the feast of Saint Michael.<sup>95</sup> And the view of frank pledge shall be likewise at the feast of Saint Michael, without occasion; so that every man may have his liberties which he had, or used to have in the time of King Henry, our grandfather, or which he hath purchased since. The view of frank pledge<sup>96</sup> shall be so done that our peace may be kept; and that the tything be wholly kept as it hath been accustomed; and that the sheriff seek no occasions, and that he be content with so much as the sheriff was wont to have for his view-making in the time of King Henry, our grandfather." 2 Inst. 69.

The 36th chapter is as to lands given to a religious house;<sup>97</sup> the 38th concludes the charter.<sup>98</sup> Both in the title and in divers parts of

<sup>94</sup> "It appeareth that the law made by King H. I was (after the great heat of the conquest was past) but a restitution of the ancient law of England; and forasmuch as the bishop with the sheriff did go in circuit twice every year by every hundred within the county (which also appeareth by this chapter of Magna Charta in these words, *turnum suum per hundreda, &c.*), it was called tour or tourn, which signifieth a circuit or perambulation." 2 Inst. 70.

<sup>95</sup> "Where this branch saith, '*Semel post Pasch. &c.*,' the Statute of 31 E. III explaineth it, viz: one time within the month after Easter, and another time within the month after S. Michael, and, if they hold them in any other manner, then they should lose their tourn for that time, which is as much to say, as *the court so holden for that time shall be utterly void*, and the sheriff shall lose the profits thereof." 2 Inst. 71. The Statute of 31 E. III is in 1 Stat. of the Realm 352.

<sup>96</sup> "Of ancient time the sheriff had two great courts, viz: the tourn and the county court: afterwards for the ease of the people, and specially of the husband-

man, that each of them might the better follow their business in their several degrees, this court here spoken of, viz: view of frank pledge or leet, was by the king divided, and derived from the tourn and granted to the lords to have the view of the tenants and resiants within their manor, &c." 2 Inst. 70, 71. "So likewise, and for the same reason, were hundreds and hundred courts divided and derived from the county courts." *Id.*, 71. "And as the county court and hundred court are of one jurisdiction, so the tourn and leet be also of one and the same jurisdiction." *Id.*, 71. But both of the tourn and the leet this may be truly said:

"*Tempora mutantur, et nos mutamur in illis.*"

3. "This frank pledge consisted most commonly of ten households" Ten masters of families were bound one for another's family, that each man of their several families should stand to the law, or, if he were not forthcoming, that he should answer for the injury or offence by him committed." 2 Inst. 73.

<sup>97</sup> 2 Inst. 74, 75.

<sup>98</sup> *Id.*, 76 to 78.

the body of the charter, the king speaks in the plural number.<sup>99</sup> The conclusion is *hiis testibus*.<sup>100</sup> And it was established by authority of parliament.<sup>101</sup> A writ for the collection of the fifteenth (the price of the re-issue of the charters) was issued on the 15th of the same month.<sup>102</sup>

12. *Names of additional justices appointed in 9 Hen. III, 10 Hen. III, and 11 Hen. III. Among the appointees in 10 Hen. III were Peter de Brus (or Bruis), and William de Raleigh (or Radley). Common, then, to place an ecclesiastic at the head of the commission for a shire.*

Subjoined are names of justices appointed in 9 Hen. III.<sup>103</sup> Sep-

<sup>99</sup> Ld. Coke says: "The first king that I read of before him, that in his grants wrote in the plural number, was King John, father of our King H. III; other kings before him wrote in the singular number; they used *Ego*, and King John, and all the kings after him, *nos*." 2 Inst. 2.

<sup>100</sup> Ld. Coke says: "A great number of reverend and honorable personages, in all 63, of which there were of the clergy 31, whereof there were 12 bishops and 19 abbots, and Hugh de Burgo, chief justice, and 31 earls and barons." He observes that such conclusion *hiis testibus* was used by King H. III and his progenitors, kings of this realm before him, and by his son E. I, and by E. II and E. III after him: afterwards in the beginning of the reign of R. II. I find the clause of *hiis testibus* was left out, and instead thereof came in *teste me ipso* in this manner, '*in cujus rei testimonium has literas nostras fieri fecimus patentes: teste me ipso*, which, since, by all his successors, kings and queens of this realm (except in creations), hath been used. Those that had *hiis testibus* were called *charta*, as this charter is called *magna charta*, and so is *charta de foresta*, &c., and those other that be *teste me ipso*, are called letters patent,

being so named in the clause of '*in cujus rei testimonium has literas nostras fieri fecimus patentes*.' And this was the ancient form also of the deeds of subjects, concluding with '*hiis testibus*, which continued until and in the reign of H. VIII, but now is wholly omitted, and now the witnesses are subscribed under the deed, or endorsed thereupon." 2 Inst. 78.

<sup>101</sup> Id., 78. It is cited as an example, that acts of parliament do go in the form of the king's charter. *Prince's case*, 8 Rep. 19 a.

<sup>102</sup> Feb., 1225. Select Charters, p. 345 to p. 348. Of the method of assessing and collecting this impost, Mr. Stubbs says, it "seems to be devised so as to unite all the expedients of the former precedents. The assessment is to be made by the oath of the owner of taxable property: disputes are to be settled by reference to juries; the proceeds are to be collected by the reeve and four men of each township, and to be paid to four elected knights of the hundreds, and these are to hand over the money to the persons assigned by the king, and to whom the writ is addressed." Id., pp. 345, 346.

<sup>103</sup> Hugh de Clahaul, a justice itinerant for Essex and Hertfordshire. Foss's



arately are names of others appointed in the following year.<sup>104</sup>

Biogr. Jurid.

*Robert de Cokefield* (or Kokèfield), a justice itinerant for Yorkshire. He was constable of the castles of Scarborough and Pickering; for custody whereof he had 200 marks per annum. From 1226 to 1229 he had the sheriffalty of the county. *Id.*

*Richard Duket*, who, in 6 and 7 Hen. III, was sheriff of the counties of Norfolk and Suffolk, was, in 1225, part of the year, one of the justices itinerant commissioned to several counties, and another part of it on an embassy with Philip de Hadham to the court of Rome. In the next year, and till 17 Hen. III, he was still employed as a justice itinerant; it is not improbable that he was also one of the regular justiciers at Westminster. He died about 1245. *Id.*

*Walter Duredent*, a justice itinerant for Buckinghamshire. *Id.*

*Alan de Englefeld*, a justice itinerant for Berkshire and coroner for Staffordshire. *Id.*

*Jordan de Esseby* (Ashby), a justice itinerant for Lincolnshire, being at that time constable of Lincoln castle. *Id.*

*Henry Le Evesk*, a justice itinerant in Cambridgeshire and Huntingdonshire. *Id.* In the latter shire *Walter Fitz-Robert* was also a justice itinerant in the same year. *Id.*

*Brian Fitz-Alan* was, from 9 to 15 Hen. III, justice itinerant in the northern counties; and was sheriff of Northumberland from 13 to 19 Hen. III, and of Yorkshire from 21 to 23 Hen. III. *Id.*

*William Fitz-Roscelin* was named, in 9 Hen. III, as a justice itinerant for Norfolk and Suffolk, but, being ill, did not act. On several occasions he was named with others to take assizes; in 11 Hen. III he was the first named in a commission into that county to try two

prisoners. *Id.*

*Richard Fitz-Simon*, a justice itinerant for Essex and Hertfordshire; and in the two next years a commissioner to collect the quinzime, and to assess the tallage there and in Cambridge and Huntingdon. He died in 17 Hen. III. *Id.*

*William Fitz-Warine* was, in 9 Hen. III and several following years, a justice itinerant in several counties, one of which was Lincolnshire; in 12 Hen. III, a fine was levied before him. The castle of Rockingham was entrusted to him, as constable, in 10 Hen. III. He was sheriff of Worcestershire in 13 Hen. III, and of Herefordshire in 16 Hen. III and the two following years. His only daughter, Asselina, married Thomas Lyttelton, ancestor of the eminent judge in the reign of Edw. IV. *Id.*

*Adam Fitz-William* was, from 9 to 21 Hen. III, a regular justicier at Westminster; and a justice itinerant. From 18 to 20 Hen. III, there are mandates to him as one of the king's escheators. *Id.*

*Robert Fitz-William* was, in 9 Hen. III, a justice itinerant in Nottingham and Derby. He seems to have been one of the coroners of Cumberland in that or the next year, and to have died while holding this office. *Id.*

*William de Franchevill* was, in 9 Hen. III, a justice itinerant for Norfolk and Suffolk. To him and other gentlemen of Norfolk county, mandates are addressed from 8 to 11 Hen. III, to take assizes as to lands claimed by the church; and as to the right of presentation. *Id.*

*Simon de Hale*, sheriff of Yorkshire before 8 Hen. III, was, in the next year, at the head of the justices itinerant in no less than ten counties; and in 11 Hen. III, was appointed to three additional counties. In 10 Hen. III, he was sheriff of Wiltshire; and his people in Yorkshire were exempted from the rates of

Among the appointees in 10 Hen. III, were *Peter de Brus*<sup>105</sup> (or

the county and hundred during his absence. He is last mentioned in 1240; when before him, as a justice itinerant, a fine was levied in York. *Id.*

*William de Haunsaid* was a justice itinerant for Surrey in 9 Hen. III; and in the two next years assessed the quinzime and the tallage in that county. *Id.*

*Jordan Heyrun* was, in 9 Hen. III, a justice itinerant for Northumberland and Westmoreland; and, in 1228, for the liberties of the bishopric of Durham. *Id.*

*John de Houton* (or Hoc-ton) was archdeacon of Bedford, when, in 9 Hen. III, he was appointed a justice itinerant for the counties of Bedford and Buckingham. In Jan., 1224, he was sent on a mission to Rome; on his return, the distribution of the stones of Bedford castle (then razed to the ground in consequence of the misdoing of Faukes de Breaute) was entrusted to him with Henry de Braybroc and the sheriff of the county. In the next year, besides being a justice itinerant, he was again employed in foreign parts, first in July, and then in October. In 1228 he took the principal part in the mission to Rome to oppose the election of Walter de Heynsham as archbishop of Canterbury. In 1231 he changed his archdeaconry for that of Northampton; in 1246 he died. *Id.*

*William de Insula*, who, in 1222, was appointed with others to hold pleas of the forest at Northampton, and became constable of Rockingham castle, was nominated as a justice itinerant in 9 Hen. III for the counties of Northampton and Rutland; and afterwards for Lincolnshire and several other counties. From Easter, 1228, till Easter, 1231, he was in the higher position of a justicier in Banco at Westminster. Not only during this period, but as late as 18

Hen. III (1233) he was acting in numerous counties. *Id.*

*Richard de Kaune* (or Calne) was a justice itinerant in Wiltshire in 9 Hen. III; and about the same time was appointed to take assizes of last presentation, &c., in that county. *Id.*

*Richard de Kellesay*, abbot of Selby, was, in 9 Hen. III, the last named of the justices itinerant for York county. *Id.*

*Richard de Levinton* was a justice itinerant in 9 Hen. III for the counties of Cumberland and Westmoreland; and in 18 Hen. III for Lancashire. *Id.*

*Alured de Lincoln* was, in 9 Hen. III, a justice itinerant for Dorset county. He died about 1290. *Id.*

*Ralph de Lydiard* was, in 9 Hen. III, a justice itinerant for Somerset county. *Id.*

*Roger de Merlay* was a justice itinerant in 9 Hen. III for Northumberland, and in the next year for Cumberland. He died in 1239. *Id.*

*Richard de Montfichet* was, in 9 Hen. III, a justice itinerant for the counties of Essex and Hertford. *Id.*

*Jordan Oliver*, who, in 5 Hen. III, was one of the escheators for Devon county, was, from 9 to 22 Hen. III, a justice itinerant in that and several other counties. In 24 Hen. III he held the office of sheriff for one year. *Id.*

*Peter*, as abbot of Tewkesbury, was, in 9 Hen. III, a justice itinerant for Gloucester county. He died in 1232. *Id.*

*Adam de Portseye* was, in 9 Hen. III, a justice itinerant for Hants county; in the next year he assessed the quinzime for that county. *Id.*

*John de Reiny* was, in 9 Hen. III, a justice itinerant for Somersetshire. He died in, or before, 1246. *Id.*

*John de St. Helena* was, in 9 Hen.

Bruis), and *William de Raleigh*<sup>106</sup> (or Radley). It seems to have

III, a justice itinerant for Berkshire; in the next year he assessed the quinzime there. *Id.*

*John de St. John* was, in 9 Hen. III, a justice itinerant for Oxfordshire. He died in 14 Hen. III, when Geoffrey le Despenser paid £100 for the guardianship of Roger, his heir. That heir fell, in 1265, at the battle of Evesham. *Id.*

*Richard de Stoke* was coroner in Buckinghamshire; in 9 and 11 Hen. III he was appointed there a justice itinerant. *Id.*

*Theodore de Valoines* is described as archdeacon of Essex in 1225, when he was constituted justice itinerant in York county. He is mentioned as archdeacon in 1228. *Id.*

*Richard de Veym* was one of those appointed in 9 Hen. III as justices itinerant in Gloucestershire; and, in 10 Hen. III, to assess and collect the quinzime of that shire. *Id.*

*William de Waleis* was, in 9 Hen. III, a justice itinerant for Dorsetshire; and in the next year appointed to assess and collect the quinzime in that shire. *Id.*

*William de Welles*, who held either part or the whole of a knight's fee in Grimsby, in Lincolnshire, and was, in 5 Hen. III, one of the escheators of his shire, was, in 9 Hen. III, appointed a justice itinerant there. He died in June, 1261.

*William de Wichinton* (or Wythintune), seneschal or steward of the great abbey of Ramsey, was, in 9 Hen. III, an itinerant justice in the counties of Cambridge and Huntingdon; and, in the next year, one of those appointed to assess and collect the quinzime for those counties. *Id.*

<sup>104</sup> *Walter de Beauchamp* (Bello Campo) was a justice itinerant in 1226 and in 1227. In 14 Hen. III, he was dis-

seised of the sheriffalty of Worcester-shire; before the close of that year he was reinstated in his office on a fine of six palfreys. He died in 1236. Foss's Biogr. Jurid.

*John de Daivill* (or D'Ayevill) was, in 10 Hen. III (1226), a justice itinerant for Westmoreland county; and in 41 Hen. III, justice of the forests beyond Trent; he was afterwards governor of the castles of York and Scarborough. In the contest between the king and his barons, he joined the latter, and after the battle of Lewes was summoned to their parliament. He even continued the contest after the royal victory at Evesham; and suffering another defeat at Chesterfield, fled to the Isle of Axholme, in Lincolnshire. He, however, purchased his peace in 51 Hen. III, and was restored to his possessions. *Id.*

*John Fitz-Robert*, who held the sheriffalty of Northumberland for four years, commencing in 9 Hen. III, was in 10 Hen. III, a justice itinerant for Yorkshire. From a writ in the Exchequer in 1238, it seems he was then acting as a baron of the Exchequer. *Id.*

*Ranulph Fitz-Robert* was grandson of that Robert Fitz-Ralph who married a daughter of Ranulph de Glanville. He (Ranulph Fitz-Robert) married Berta, the niece of Ranulph de Glanville, and succeeded to a share of his property with the representatives of that great man's two other daughters. He filled the office of a justice itinerant in 10 Hen. III, for Lancashire, and in 15 Hen. III, for Yorkshire. He died before Dec. 25, 1252. *Id.*

*Brian de Insula* (so called from the Isle of Wight, or the Isle of Ely) had, on the accession of Henry, a renewal of the custody of the castle of Knarborough, and the forests of Nottingham, and aided the royal troops both at Mont-

been then a common practice to place an ecclesiastic at the head of the commission for a shire. Thus at the head of the commission this year (10 Hen. III), there was, for Worcestershire, *Thomas*, abbot<sup>107</sup> of Winchecum, in Gloucestershire; for Northumberland county, *Roger de Scardeburg*, abbot<sup>108</sup> of Whitby; and for Lincoln county, *Alexander de Holderness*, 'abbas de Burgo.'<sup>109</sup> In consequence of his appointment, several causes between the abbot and

sorel and Lincoln. In 5 Hen. III, he was constituted chief justice of the forests, but about three years afterwards was removed from his office, having got into disgrace by being one of the barons who refused to comply with the injunction to surrender the castles. *Id.*

*John de Lacy*, earl of Lincoln, filled the office of justice itinerant in 10 and 18 Hen. III, and was entrusted with the sheriffalty of Cheshire in 21 and 24 Hen. III. He died July 22, 1240, and was buried in the abbey of Stanlaw. *Id.*

*William de Lancaster* was, in 10 Hen. III, a justice itinerant for Cumberland county; and held the sheriffalty of Lancashire from 18 to 30 Hen. III. He died in Dec. 1246. *Id.*

*Walter le Poer* was sheriff of Devon in 6 Hen. III, and in 1226, one of those appointed to collect the quinzime in Worcestershire. He was a justice itinerant in the same year in Gloucestershire, and in 1227 in the counties of Oxford, Hereford, Stafford and Salop. *Id.*

<sup>105</sup> Descended from Robert de Brus, a valiant Norman knight, who accompanied William the Conqueror on his invasion of England, and who was rewarded with no less than 94 lordships in Yorkshire, of which Skelton was his principal seat, and whose son, Robert, acquired Annandale by marrying its heiress. After two Adams there were four Peters, of whom the second was a strong adherent to Prince Louis, when he was introduced by the barons after

their troubles with King John. The third Peter was, on June 30, 1226 (10 Hen. III) appointed a justice itinerant for Northumberland county; and afterwards commenced a journey to the Holy Land, where probably he died before Nov. 15, 1240. Foss's Biogr. Jurid.

<sup>106</sup> He was, in 14 John, presented to the living of Bratton in the archdeaconry of Barnstaple, and pursued at the same time the study of the law. He, or one of the same name, being coroner, was raised in 9 Hen. III to the sheriffalty of Devon county. He was one of those appointed in the next year to collect the quinzime in Lincolnshire; and in the following year to assess the tallage in Cumberland and Northumberland. Soon afterwards he was a justicier at Westminster; fines being levied before him in this character from 1228 till 1234, during which time he also performed the duties of a justice itinerant. There is no evidence of his acting as a judge after 1235. His character was so high, both as an ecclesiastic and a lawyer, that he was soon elected to two bishoprics—those of Lichfield and Coventry, and of Norwich—the latter of which being accepted, he was consecrated Sept. 25, 1239. *Id.*

<sup>107</sup> His election as abbot was in 1220; he died Octo. 3, 1232. Foss's Biogr. Jurid.

<sup>108</sup> Elected to the abbacy in 1222. He died in 1244. *Id.*

<sup>109</sup> Elected to that dignity in 1222. *Id.*

other parties at those assizes were ordered to be heard before the justices of Westminster in Easter; before that period Alexander died (in Nov. 1226).<sup>110</sup>

In 2 Hen. III, there were appointed the additional justices named below.<sup>111</sup>

13. June 22, 1226, "writ for the summoning of four knights of the shire." Richard de Marisco succeeded, in 1226, as chancellor, by Ralph de Neville, bishop of Chichester. Of Henry's age when he undertook to regulate the affairs of the realm by himself. Hubert de Burgh continued to be justiciar. Trace of an inner royal council, distinct from the curia regis as it had been, and from the common council of the realm. Now the common council claims the right of nominating, or confirming nominations of, the justiciar, chancellor and other great officers of state.

A "writ for the summoning of four knights of the shire," which issued June 22, 1226, is produced by Mr. Stubbs as "an interesting

<sup>110</sup> He was buried in the abbey; in 1230 a grave, opened in Peterborough Cathedral, was identified as his by a piece of lead inscribed 'Abbas Alexan.' *Id.*

<sup>111</sup> *Fulco Baynard* (descended from a younger brother of Geoffrey Baynard, whose son, William, in the time of Henry I, had Baynard's castle, near St. Paul's, in London) was, in 2 and 11 Hen. III, one of those selected to assess the tallage in Norfolk, and was, before 11 Hen. III, one of four appointed to take particular assizes of novel disseisin in Norfolk county. In Nov. of that year (1226), he and three others were constituted justiciars to try some prisoners (charged with murder) in custody of the bishop of Ely. Foss's Biogr. Jurid.

*Maurice de Gant* was, in August, 1227, nominated one of the justices itinerant for five counties. In 1230 he embarked with King Henry in April on his expedition into France, and there died in August. *Id.*

*John de Kirkeby* was, in August, 1227,

one of five justices itinerant for the counties of Northampton, Bedford, Buckingham, Cambridge, Huntingdon and Rutland. In 14 Hen. III the tallage of Yorkshire was assessed by him. In Easter, 1236, he was a justiciar, taking the acknowledgment of fines. *Id.*

*William de London* was elevated to the bench shortly after, if not before, August 1227, when his name, in the commission to justices itinerant for several counties, stands next to Stephen de Segrave. In 1230 his position is equally prominent. From 13 to 15 Hen. III fines were levied before him at Westminster. *Id.*

*William de Sorewell* (or Shorewell) was united with Peter de Rùpibus, bishop of Winchester, in the sheriffalty of Hampshire, for seven years commencing 2 Hen. III; and with Joscelin, bishop of Bath, in the sheriffalty of Somerset county, in part of the ninth year of that reign. He was, in 10 Hen. III, one of those employed to collect the quinzime of the former

illustration of the extending use of the election of representatives to act for the shire, in matters neither judicial nor exclusively financial." He observes that the business on which they are called together, the disputed interpretation of some articles of the great charter, although not distinctly declared, is more of the character of *political deliberation* than anything that has hitherto been laid before them."<sup>112</sup>

In 1226, after the death of *Richard de Marisco* (mentioned in § 6, p. 283), and before the 28th of June, *Ralph de Neville*<sup>113</sup> became chancellor.<sup>114</sup>

Henry, though not yet twenty, considered himself of age to govern, as the pope had declared.<sup>115</sup> In a council at Oxford, in Jan., 1227, he announced that henceforth he should regulate the affairs of the realm by himself.

There is a charter of Feb. 12, 1227, granting to Ralph de Neville, bishop of Chichester, the chancery for his life.<sup>116</sup> *Hubert de Burgh* continued to be Henry's minister, and was raised, in 1227, to the earldom of Kent. *Peter de Rupibus*, the bishop of Winchester, being now out of favour, was soon on a journey to the Holy Land.<sup>117</sup>

As to "the termination of the king's minority," it is observed that

county; and in the next year, 1227, was a justice itinerant in the latter county, and also in Dorsetshire and Wiltshire. He died before Aug. 7, 1228. *Id.*

<sup>112</sup> Select Charters, p. 348.

<sup>113</sup> Stated to have been born at Raby castle, the seat of the baronial family of De Neville, in Durham county. As mentioned in ch. 13, § 5, note, the Great Seal was delivered to him Dec. 22, 1213, to be held under the Bishop of Winchester, *Peter de Rupibus*. About this time several churches were successively given to Ralph de Neville; in April, 1214, he was appointed dean of Lichfield. While the chancellor, *Richard de Marisco* was absent from England, in 5 Hen. III (1221), on a visit to Rome concerning his diocese, *Ralph de Neville* (as stated in § 6, p. 283) seems

to have been his deputy in the duties of the chancery. In 1222 he was appointed chancellor of Chichester, and Nov. 1, 1223, was elected bishop of that see. In 1224 he sat as a justicier in Shropshire with William de Houbrug. Foss's Biogr. Jurid.

<sup>114</sup> By this title he is designated in the grant of a market dated June 28, 1226. There are charters under his hand in Dec., 1226. *Id.*

<sup>115</sup> See § 7, pp. 288, 289. Letters issued by Honorius, in 1223, recognizing the king's competency, were renewed by the new pope, Gregory IX. 2 Stubbs's Const. Hist., ch. 14, p. 39.

<sup>116</sup> A charter which was renewed in 13, 16 and 17 Hen. III. Foss's Biogr. Jurid.

<sup>117</sup> And was absent two or three years. *Id.*

"the period leaves its mark on the framework, and even on the theory, of the government. It is from this point that we first distinctly trace the action of an inner royal council, distinct from the *curia regis* as it existed under Henry II, and from the common council of the realm. The king's personal advisers began to have a recognized position, as a distinct and organized body, of which the administrative body, the judges and other officers of state and household, form only a part."<sup>118</sup>

"Another point of like significance comes also into light: as soon as the constitutional disputes of the reign begin, the common council of the realm claims the right of nominating, or confirming the nomination of the great officers of state, the justiciar, the chancellor and the treasurer. In previous times, although new appointments would no doubt be announced in the meetings of the great council, there is no trace of such a claim. During the minority, it is not unlikely that that assembly was formerly consulted; *Hubert de Burgh* may have been continued in the justiciarship by the same body that conferred the regency on *William Marshall*, and we are distinctly told that *Ralph Neville* received the chancellorship and the great seal in 1226, by appointment of the common council of the kingdom."<sup>119</sup>—"It is probable, then, that the events of Henry's minority had a considerable effect in creating the idea of limited monarchy, which almost immediately springs into existence. It is, at all events, not improbable that the constitutional doctrine that the king can do no wrong, and that his ministers are responsible to the nation, sprang up whilst the king was a child, and the choice of his ministers was actually determined by the national council."<sup>120</sup>

14. *Additional appointments of justices during Hubert's administration. Of the power which he exercised, though hampered by the king's interference; circumstances combined to make his position difficult; yet he did a great work.*

During the continuance of Hubert's administration, there were additional appointments of justices.<sup>121</sup> He was able during this time

<sup>118</sup> 2 Stubbs's Const. Hist., ch. 14, p. 40,

<sup>119</sup> And in 1236, refused to resign his office without a requisition from the body that had appointed him. *Id.* p. 41.

<sup>120</sup> 2 Stubbs's Const. Hist., ch. 14, p. 41.

<sup>121</sup> *Hugh de Northwold*, abbot of St. Edmund's, was a justiciar in 12 Hen. III (1228); a few months after acting as a judge, he was nominated bishop of Ely; he held this see till his death. His charity and hospitality, his munificent expenditure in the erection of his church, and his splendid entertainment

to the king and the nobles on its dedication, in 1252, are the admiration of his contemporaries. Foss's Biogr. Jurid.

*Robert de Shardelowe* (or Cherdelawe) was a justiciar at Westminster from Mich., 13 Hen. III, 1228, to Easter, 1232; and, during this period, was appointed to three circuits. *Id.*

*Ralph Fitz-Reginald* was a justice itinerant in 14, 16 and 18 Hen. III. *Id.*

*John de Ulecot*, who was sub-sheriff of Northamptonshire in 6 John, and of Cambridge and Huntingdon for four

to exercise a directing power in the state, although hampered by Henry's interference even more than he had been by the hostility of Peter des Roches. He had, in fact, to hold himself responsible, not only for his own strong measures, but for the king's imprudences.

"Many circumstances combined to make the position of the justiciar difficult. On the 9th of July, 1228, he lost his most able and honest coadjutor, Archbishop *Langton*, the man who, more than any other, had helped to give form and consistency to the constitutional growth, and had also staved off difficulties with the papacy. Honorious III had died the year before, and Gregory IX took immediate advantage of the removal of Langton's influence. In 1229 he demanded a tenth of all property for the war against the emperor. A great assembly of tenants-in-chief was held at Westminster on the 29th of April; the earls and barons, led by the Earl of Chester, opposed the grant; the clergy, under threat of interdict, gave a reluctant consent; the king assented in silence; he had pledged himself, by his proctors at Rome, to agree to the impost, in order to obtain the confirmation of his nominee to the primacy; and from the clergy the tax was rigidly collected. Master Stephen, the pope's collector, provoked a popular rising; an anti-Roman league was formed, with the connivance, it was thought, of the justiciar, and the papal agents were insulted and ill-treated. Henry, whose devotion to the papacy was the most permanent result of his education, if not

years from 5 Hen. III, was, in 14 Hen. III (1229), a justice itinerant for Sussex and Rutland. *Id.*

*Ralph de Norwich*, after acting with Elyas de Sunning, as justice of the Jews, was constituted one of the 'king's justices of the bench' on April 29, 1230; and fines were levied before him till Hil., 1234. *Id.*

*Richard Reinger* (or Renger), an alderman of London, served as sheriff in 5, 6 and 7 Hen. III, and as mayor in the next four years. During part of this time the chamberlainship of the city was committed to him and to John Travers. Afterwards the mint of London was for a time in custody of him and Alexander de Dorset. In 13 Hen. III it was transferred, together with that of Canterbury, to him alone, for four years, at an annual rent of 700 marks. While in this office he acted as a justiciar; fines being levied before him from

Hil., 1230, till Easter, 1231. He was still alderman in 19 Hen. III, but died soon afterwards. *Id.*

*William de Loudham* was the last of seven justices itinerant, appointed in 15 Hen. III, for York county. *Id.*

*Walter de Cantilupe*, second son of William de Cantilupe, was educated for the church, and after being presented to the living of Eyton, had no less than seven benefices. In 16 Hen. III (1231) he was one of seven justices itinerant named for several counties. *Id.*

*Henry de Tracy* was, in 17 Hen. III (1232), at the head of the justices itinerant into Cornwall. In 41 Hen. III, an assize of novel disseisin, &c., was directed to be taken before him in Devonshire, and he was made governor of Exeter castle. In 45 Hen. III, he is named among the barons of the Exchequer. *Id.*



also the strongest feeling of which he was capable, began to look on Hubert with aversion from this time."<sup>122</sup>

"Hubert had done a great work. Following in the footsteps of William Marshall, he had taken a middle path between the feudal designs of the great nobles and the despotic theories of John, which had still some support among the old officials of the court. In so doing he had found himself adopting, for the most part, the principles of the barons of Runnymede. He had attempted to govern England for English interests, husbanding her resources, and keeping her at peace. The king of Scots he had bound by giving him a daughter of John to wife, and he had himself married a daughter of William the Lion; he had kept peace with France until his personal influence was on the wane, and the young king began to listen to rasher if not bolder counsels. He had attempted to strengthen the royal connexion with the barons, especially with the great house of the Marshalls, which inherited not only the reputation of the regent, but the enormous claims of the lords of Striguil, in Wales and Ireland; he had married the younger earl, William, to the king's sister; and Richard, of Cornwall, to a sister of the earl. His hardest toil had been in the humiliation of the foreigners, and in this he had succeeded."<sup>123</sup> "Like *Hubert Walter* and *Geoffrey Fitz-Peter*, Hubert de Burgh had served the king too well to please the nation, and had spared the nation too much to please the king."<sup>124</sup>

15. *Of 1231; "the writ for assembling the county court before the judges itinerant;" "writ for assembling the 'Jurati ad arma;" and return of Peter des Roches from the crusade. Of the council of March 7, 1232; Peter's advice; and the king's action. He dismissed from the treasurership an old clerk of Hubert; appointed in the treasurer's place Walter Mauclerk, bishop of Carlisle; and afterwards dismissed Hubert himself. The persecution of Hubert based upon untenable accusations.*

Of the writ of April 20, 1231, 'for assembling the county court,' Mr Stubbs observes, there may be gathered from it "what was the exact composition of the shiremoet at this period. No change seems

<sup>122</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 42, 43. He was only saved by the interposition of his personal enemy, the earl of Chester, from being disgraced because of his opposition to the Gascon war. *Id.*, p. 43.

<sup>123</sup> *Id.*, pp. 43, 44. Those, on whom the humiliation fell, were men who had no small share in placing Henry on the throne. Mr. Stubbs says: "Hubert taught the boy that personal gratitude

must give way to state policy. Henry was an apt scholar in learning the lesson of ingratitude; policy he could not learn. He had thrown off the yoke of Peter des Roches when the justicier bade him; now he threw off the justiciar at the bidding of the bishop, and reversed the policy that he had failed to comprehend." *Id.*

<sup>124</sup> *Id.* 44.

to have taken place in it since the reign of Henry I. It contains all the elements that were united in the '*Commune Consilium regni*' at the time, '*archiepiscopus, episcopus, abbates, priores, comites, barones, milites et omnes libere tenentes*,' the very words in which the national councils of Henry II's reign are described; but it contains further the representative bodies; the ancient English townships, each represented by the reeve and four men; the new municipalities represented, by the twelve legal men from each borough. We begin to see more clearly the process by which the national council becomes the representative parliament."<sup>125</sup>

Of the writ of July 16, 1231, for assembling the '*Jurati ad arma*,' Mr Stubbs observes that it "helps us to realize very clearly the practical identity of the *jurati ad arma*,—the local force armed by the assize of arms,—with the ancient militia of the *fyrð*"<sup>126</sup>

"*Peter des Roches* had returned from the crusade in 1231. He entertained the king at Christmas at Winchester, recovered the royal confidence, reformed his party in the council, and resumed his designs. Henry was in want of money; in a council on the 7th of March, 1232, the barons, led by the earl of Chester demurred to a grant of aid for the French war, on the plea that they had served in person; the clergy objected on account of insufficient representation; the Welsh, too, were in arms; and the king complained to Peter that he was too poor to enforce order. The bishop at once urged the dismissal of the ministerial staff; it was no wonder that the king was poor, when his servants grew so rich. The hint was not wasted. Henry forthwith dismissed the treasurer, *Ranulf le Bret*,<sup>127</sup> an old clerk of Hubert, and, on the 4th of July, appointed" in his place Bishop *Walter* (Mauclerk) of *Carlisle* (mentioned *ante* § 6, and *post* § 17); "three months later, Hubert, who but a month before had been made justiciar of Ireland for life, was summarily dismissed July 29."<sup>128</sup>

As to Hubert de Burgh, Mr. Stubbs observes, that "his persecution, like Wolsey's, was based upon untenable accusations, on

<sup>125</sup> Select Charters, pp. 349, 350.

<sup>126</sup> *Id.*, pp. 350, 351.

<sup>127</sup> *Ranulph Brito* (or Le Breton), who was chaplain to *Hubert de Burgh*, the chief justiciary, in 1221, afterwards became a canon of St. Paul's. In 7 Hen. III he assessed the tallage in Wilton; he appears to have been about the king's person then, and for some years afterwards. In 11 Hen. III there was a grant to him of part of the wood in two places, to hold by the service of a pair

of gilt spurs. When dismissed from the treasurership, he was also fined—in no less than £1,000—on an allegation of fraud and corruption. The king, indeed, in his first anger, banished him from the kingdom, but within two months, on payment of the fine, restored him to favour, though not to his place. He died in 1247. Foss's Biogr. Jurid.

<sup>128</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 44, 45.

charges which are, for the most part, so far from reasonable probability, that they prove the innocence of the man against whom nothing more plausible could be alleged."<sup>129</sup>

16. *Of Stephen de Segrave, who, in 1232, succeeded Hubert de Burgh as chief justiciary; regulations in 1232 for collection of the 'fortieth;' and in 1233 for conservation of the peace.*

*Stephen de Segrave*,<sup>130</sup> who during the king's absence in Poitou, in 1230, had been joined with *Ralph de Neville* in the administration of affairs, was now (July 29, 1232) appointed to succeed *Hubert de Burgh* in the office of chief justiciary, together with the government of all the castles from which his predecessor had been removed.<sup>131</sup>

There were important regulations by the writ in 1232, for the collection of the 'fortieth,'<sup>132</sup> and that in 1233 (June 1), for the conserva-

<sup>129</sup> *Id.*, ch. 14, p. 44; also, p. 46.

<sup>130</sup> He acted, during several years of Richard's reign, as sheriff of Leicester; was, in 8 John, one of the two '*custodes placitorum coronæ*' (Abb. Placit. 55); and, in 16 John, was sent into Worcester county to forward the king's affairs. Brought up in his youth as an ecclesiastic, he had no doubt added to the clerical profession, as was then usual, the study of the law, and he continued his attention to it; he was soon raised to the bench. In records of fines, his name occurs from 2 Hen. III (1218) till Mich. 14, Hen. III, during which time, and in the next two years, he was frequently employed as a justice itinerant, holding, from 10 Hen. III, the highest place in commissions to which he was attached. He had also been entrusted with other important commissions, being sent, in 3 Hen. III, on an embassy to the legate, and, in the next year, appointed governor of Sauvey castle, in Lancashire. For the three following years he acted as sheriff of the counties of Lincoln, Essex and Hertford, and as constable of the Tower of London, with an allowance of £50 per annum. He

was made sheriff of Buckingham and Bedford in 12 Hen. III, and then of Warwick and Leicester and Northampton for his life. Foss's Biogr. Jurid.

<sup>131</sup> *Id.* Of *Thomas de Muleton*, who in Jan., 1227, was placed at the head of one of the commissions, Mr. Foss says, that "he retained this position in all his remaining circuits, except that, in one instance, 1232, he was preceded by Stephen de Segrave, who then was Justiciarius Angliæ." *Id.*

<sup>132</sup> Select Charters, pp. 351, 352. "The assessment in this case is to be made by four men and the reeve in each township on oath, and the four men are to be fixed on by election; an important indication of the usual process in such selections. The grant of the 'fortieth' is said to be made by the 'archbishops, bishops, abbots, priors, clergy, earls, barons, freeholders and villeins.' If these words are to be understood literally, the freeholders and villeins must have been consulted in the shire-moots, or else the lords must have been supposed to represent their own villein tenants in the 'Commune Consilium,' as is the case in 1237." *Id.*, 351.

tion of the peace.<sup>133</sup>

17. *Changes, in 1233, in the office of treasurer; and in sheriffdoms and other places. Opposition under earl marshal Richard. Resolution of the earls and barons announced by Robert Bacon, a Dominican friar. Bishop Peter opposed by the other bishops. Civil war in 1234. Hubert de Burgh escaped from the church of Devizes and joined the earl. The king defeated; but the earl marshal mortally wounded.*

In 1223, *Peter de Rupibus* persuaded the king to substitute for *Walter Mauclerk*,<sup>134</sup> as treasurer, *Peter de Rivaux*, or *Rivallis*<sup>135</sup> (sometimes called *Orivallis*), and to make some important changes in the sheriffdoms.<sup>136</sup>

"The removal of the English servants of the royal household to make way for Bretons and Poitevins, shortly followed. These measures produced great and widespread apprehensions of further change, and roused at once a formidable opposition under the earl Marshall, *Richard*, the second son of the regent, the most accomplished and patriotic member of the baronage."<sup>137</sup>

<sup>133</sup> *Id.*, pp. 353, 354. Mr. Stubbs deems this "a valuable illustration of the permanence of the old English regulations for the security of peace in the country, which may be traced from the laws of Edgar and Canute, and through the statutory injunctions of William, the Conqueror, Henry II, and Richard." He observes "the principle thus expanded is here developed into a complete system of watch and ward, which, a few years later, is brought into conjunction with the Assize of aims, and completed by Edward I in the statute of Winchester, and by the assignment of justices of the peace under Edward III." *Id.*

<sup>134</sup> *Walter Mauclerk* is mentioned in § 6 and § 15, p. 283, and p. 310. In 1233, besides being ejected from his office of treasurer, he was fined £100 of silver, and deprived of various possessions. His intention to appeal to Rome was frustrated by his being stopped at Dover

(at the moment of embarkation) with such violence, that Roger, bishop of London, immediately excommunicated the officers who had impeded him, and boldly repeated the sentence before the king. *Foss's Biogr. Jurid.*; citing *R. de Wendover IV*, 264, 272. The bishop afterwards recovered the royal favour, and was appointed catechist to Prince Edward. *Biogr. Jurid.* See also post, § 24.

<sup>135</sup> By birth a Poitevin, and of *Peter de Rupibus*, a near relation; being mentioned by one writer as his son, and by other writers as his nephew; in 3 *Hen. III* (1218) one of the king's chamberlains; and a clerk in the wardrobe; in 1232 custos of the escheats and wards. *Foss's Biogr. Jurid.*

<sup>136</sup> 2 *Stubbs's Const. Hist.*, ch. 14, p. 47.

<sup>137</sup> Who had succeeded his brother in 1231. *Id.*, p. 47.

On receiving a summons to meet the king at Oxford on the 24th of June (1233), the earls and barons determined to absent themselves, and announced their resolution in plain terms to the king. *Robert Bacon*, a Dominican friar, told Henry that so long as the influence of the bishop of Winchester prevailed, there could be no peace. The king, in alarm, issued a new summons for the 11th of July, promising that if the barons would then meet him at Winchester, he would make all rightful and necessary reforms. They replied that unless the alien counsellors were dismissed, they would call together the common council of the realm and elect a new king. The bishop carried matters with a high hand; it ill became him, the chief adviser of pope and emperor, to yield. Foreign forces were levied, hostages demanded of the barons; the king was ready for war. On the 1st of August, at London, the party of opposition met, but the earl Marshall, warned by his sister, the countess of Cornwall, that Henry intended him to share the fate of Hubert de Burgh, absented himself, and, in his absence, nothing was done. A general assembly of all the military tenants of the crown was next called for the 15th of August, at Gloucester. In that meeting, Richard was declared a traitor: the king invaded his estates, and fixed a day for his trial. On the 8th of October, there was another stormy meeting: the barons denied the legality of the proceedings against the earl Marshall, and insisted that he should be tried by his peers. The bishop replied contemptuously, and with a perverse misrepresentation of the English law (which justifies the suspicious hatred with which he was regarded), that there were no peers in England, as there were in France, and that the king had a full right, through his justices, to proscribe and condemn his enemies. This provoked an immediate outcry; the bishops declared that they would excommunicate Peter, of Winchester, and the rest of the counsellors, and went so far as to pronounce a general sentence on the men who had turned the king's heart away from his natural subjects. Civil war broke out immediately; Hubert escaped from Devizes and joined the earl.<sup>138</sup> The king, having marched in person against the malcontents, suffered an entire defeat at Monmouth, in October; and the beginning of the next year saw the earl Marshall in league with the Welsh, ravaging the estates of the royal partisans.<sup>139</sup> Bishop Peter, however, was

<sup>138</sup> Richard, the third earl marshal, was earl of Pembroke. Mr. Foss mentions a precept of Octo. 15, 1233, 'to the good men of Wilts,' commanding them if *Hubert de Burgh* would not give his abjuration of the realm to *Ralph de Bray* and *Ralph de Norwich*, justices, or submit to be judged by them, to surround the church and its cemetery; and then makes this statement: "He was a few days afterwards rescued from his intended starvation by a body of armed

men, who, overpowering his guards, led him from the church, and conveyed him to the earl of Pembroke, then in arms against the king in Wales. His outlawry immediately followed." Biogr. Jurid., tit. *Burgh* (Hubert).

<sup>139</sup> Situated as *John de Monmouth* was, on the Marches of Wales, he had to sustain the attack of the earl marshal; and when the king, in 1233, had been defeated at Gros-mount, he was appointed one of the commanders of the

cunning as well as violent. He had forced the earl Marshall into armed resistance; he now took means for completely destroying him. He drew him into Ireland, to defend his estates there. Geoffrey de Marisco, the old justiciar of Ireland, was trusted to allure him to open war, to desert him, and then overwhelm him. The plan was too successful. The earl was mortally wounded on the 1st of April, 1234, and died in prison on the 16th.<sup>140</sup>

18. *Edmund Rich, the new primate, visits the king, and insists on reform of abuses, and dismissal of bad advisers. The king gives way. Peter des Roches confined to spiritual duties. Peter de Rivaux compelled to resign all his offices. Stephen Segrave fell also. Both treasurer and justiciar called to a strict account. Hubert de Burgh restored to his estates. Hugh de Pateshull succeeded Peter de Rivaux as treasurer. John Mansel's office in the Exchequer.*

"In a council at Westminster, on the 2d of February, the bishop of Lichfield had indignantly denied that friendship with the earl Marshall implied enmity to the king, and obtained from his brethren a sentence of anathema against the accusers. But the bishops soon found a more able leader in *Edmund Rich*, the new primate, whom the pope had appointed by an assumption of power as great as that by which Innocent III had compelled the election of Langton. His first act, after his consecration, was to visit the king and insist on the reform of abuses and the dismissal of the bad advisers. On the 9th of April, at Westminster, a long list of grievances was read, and Edmund declared himself ready to excommunicate the king in person. Henry gave way; on the 10th he sent word to *Peter des Roches*<sup>141</sup> that he must henceforth confine himself to his spiritual duties. *Peter de Rivaux* was dismissed and compelled to resign all his offices.<sup>142</sup> *Stephen Segrave*,<sup>143</sup> too, fell with his patron, and both

Poitevins, whom the king had introduced to resist the earl. That active general having discovered that the royal army intended to attack him, placed an ambush on the line of its march, surprised and totally defeated it; *John, of Monmouth*, escaped then by a hasty flight. He died about Sept., 1248. Foss's Biogr. Jurid. *Stephen de Segrave* and *Ralph de Neville* were with the king when he was surprised and defeated by the earl of Pembroke before the castle of Grosmont, in Monmouthshire, and was one of those who escaped '*nudi fugientes omnia quæ sua erant*

*amiserunt.*' *Id.*

<sup>140</sup> 2 Stubbs's Const. Hist., ch. 14, § 173, pp. 48, 49. His death left the headship of the opposition vacant for many years. *Id.*

<sup>141</sup> He escaped to Rome, from which he returned in 1236. Foss's Biogr. Jurid.

<sup>142</sup> He had so ingratiated himself with the king, that to the high office of treasurer, several others, of great responsibility and emolument, were added, among which were those of custos of the forests, and of most of the castles in England. But now he was made to

treasurer and justiciar were called to a strict account for their dealings,<sup>144</sup> especially for their treatment of *Hubert de Burgh*<sup>145</sup> and the earl *marshall*.<sup>146</sup>

In place of *Peter de Rivallis* (or Rivaux), as treasurer, was *Hugh de Pateshull* (son of Simon de Pateshull) who united, as was then common, the clerical profession with the performance of duties in the Exchequer. His being a canon of St. Paul's did not prevent his being gradually advanced to that position in which he had the custody of the seal of the Exchequer and the receipt of the revenue accounted for by the sheriffs.<sup>147</sup> By a writ, dated July 5, 1234, *Hugh de Pateshull*, the treasurer, was commanded to admit the king's beloved clerk, *John Mansel*,<sup>148</sup> to reside at the exchequer of receipt, in his place, and to have one roll of that receipt. Mr. Foss suggests that Mansel's office, being a new one, may have been that of chan-

give up all his possessions, and was sent to the Tower, from which, however, he was shortly released by the archbishop of Canterbury, and allowed to return to his sanctuary at Winchester. From this retirement he was suddenly recalled, in 1236, and, notwithstanding his former offences, was restored to the royal confidence. He resumed his original duties in the wardrobe, of which he was appointed keeper; and, in 1251, he had a quittance from all debts and accounts to be rendered to the king. *Id.*

<sup>145</sup> His support of the pope's exactions, and his adherence to the bishop of Winchester, were sufficient to cause his unpopularity; one effect of which was the burning (in Feb., 1234,) of his mansion at Alemundberry, while he was with the king in the neighbouring town of Huntingdon. *Id.*

<sup>144</sup> Rather than meet his accusers, *Stephen de Segrave* retired to the abbey of St. Mary at Leicester, where he resumed the clerical tonsure. Afterwards he made his peace with the king on paying a fine of 1,000 marks. *Id.*

<sup>145</sup> Hubert was soon afterwards restored to his estates. But he never resumed the office of chief justiciary. *Id.*

<sup>146</sup> The bishops, who were sent to treat with the earl, brought back only the tidings of his death, and a demand for the punishment of his enemies. 2 Stubbs's Const. Hist., ch. 14, pp. 49, 50.

<sup>147</sup> He was appointed treasurer June 1, 1234, and continued to perform the duties in 22 Hen. III. In 24 Hen. III (1240) he was consecrated bishop of Lichfield and Coventry. He was comparatively a young man when he died, Dec. 7, 1241. Foss's Biogr. Jurid.

<sup>148</sup> Said to have been grandson of Philip de Mansel, who came in with the Conqueror; and to have been son of Philip's eldest son Henry; and to have been brought up at court: for, in a letter written in 1262, the king says, he was "*sub aliis nostris educatus, cujus ingenium, mores et merita, ab adolescentia sua probavimus.*" (Rymer I. 414.) Foss's Biogr. Jurid.

cellor of the exchequer, which is first spoken of by name a few years afterwards.<sup>149</sup>

19. *Of Alexander de Swereford (compiler of the Red Book of the Exchequer); and other persons admitted in 18 Hen. III (1234), tanquam baro. Also of justices in 1234; especially of those appointed in that year ad bancum.*

The treasurer and barons of the Exchequer were, in 18 Hen. III, commanded to admit *Richard de Montfichet*<sup>150</sup> as their companion '*ad residendum ad Scaccarium nostrum tanquam baro, pro negotiis nostris quæ ad idem Scaccarium pertinent.*' In the same year (1234), July 6, *William de Beauchamp*<sup>151</sup> (Bello-Campo) was assigned to sit at the Exchequer *tanquam baro*.<sup>152</sup> *Alexander de Swereford*<sup>153</sup> is chiefly celebrated as the compiler of the Red Book of the Exchequer, in which he collected, out of the Great Rolls of the pipe, the memorials concerning the scutages assessed in the reigns of Henry II, Richard I, John, and the first fifteen years of that of Henry III, with other particulars as to the officers and practice of the department of

<sup>149</sup> Mr. Foss says, that Mansel's "activity of mind and capacity for business made him peculiarly useful" to the king "in the straightened circumstances of the royal revenue." *Id.*

<sup>150</sup> Mentioned in § 12, p. 302. Three years afterwards he was constituted justice of the forests over nineteen counties. From 26 to 36 Hen. III, he held the office of sheriff of Essex and Hertford, in which his possessions were situate, the principal of which was the barony of Stanstead. He died in 52 Hen. III (1268). Foss's Biogr. Jurid.

<sup>151</sup> He had, in John's reign, entertained the rebellious barons at Bedford castle, which afterwards was captured by *Faukes de Breauté*. When the castle was destroyed in 1224, as stated in § 10, p. 292, William de Beauchamp had the site restored to him, with part of the materials, to erect a mansion there. He was engaged in Wales in Nov., 1233, and was present at the castle of Grose-

munt when Richard, earl marshal, surprised the king, who, with many of his barons, then narrowly escaped with their lives. Foss's Biogr. Jurid.

<sup>152</sup> His attestation in that character appears three years after that date. He was, in 19 Hen. III, sheriff of the counties of Bedford and Buckingham, and held the sheriffalty for two years. He died a short time before Aug. 21, 1262. *Id.*

<sup>153</sup> Took his name from a parish, so called in Oxford county, of which he was vicar before he was rector. He was a clerk in the Exchequer, and was appointed domestic chaplain by William de Cornhill, bishop of Coventry, who had himself been an officer of that branch of the court. He was, about 1219, made archdeacon of Salop or Shrewsbury, and is mentioned Jan. 15, 1231, as treasurer of St. Paul's, having been previously a canon in that cathedral. *Id.*



revenue in the king's court, and in which he preserved the valuable work of Richard Fitz-Nigel, bishop of London, called 'Dialogus de Scaccario.' On the same 6th of July, 1234, he was assigned to take his place in the Exchequer '*tantum baro*.'<sup>154</sup>

Among the justices in 1234, were Norman de Aresey<sup>155</sup> (or D'Arcy), Ranulph Fitz-Henry,<sup>156</sup> Thomas Fitz-John,<sup>157</sup> Simon de Furnellis,<sup>158</sup> Robert Grimbald,<sup>159</sup> Jollan de Neville,<sup>160</sup> William de St. Edmund,<sup>161</sup> Robert de Salceto<sup>162</sup> (or de la Saucey) and Oliver de Vaux;<sup>163</sup> and perhaps William de Culeworth.<sup>164</sup> But more prominent than any of these was one mentioned in § 8, p. 289—*Robert de Lexinton*. In 1228, he was at the head of four justices, before whom a fine was levied at Westminster; in July, 1234, justices appointed '*ad bancum*,' were ordered to be admitted by Robert de Lexinton

<sup>154</sup> In connection with this office he attested writs as late as Octo., 1245. He died Nov. 14, 1246, and was buried at St. Cedda's altar in St. Paul's, where he founded a chantry. He is described by Madox as a 'most excellent man, whose memory is yet held in high esteem among antiquaries.' Foss's Biogr. Jurid.

<sup>155</sup> Descended from one whose chief seat was at Nocton, in Lincolnshire, where he had thirty-three lordships, the gift of the Conqueror. He was a justice itinerant, in 1234, for Lincolnshire; and, in 1245, for Nottingham and Derby. He died shortly before Octo. 16, 1254. Foss's Biogr. Jurid.

<sup>156</sup> His family is traced to Bardolph, lord of Ravensworth, in the time of William, the Conqueror. Ranulph married Alicia, daughter and heir of Adam de Staveley; was one of the justices itinerant sent, in 1234, into Cumberland, and died before Jan. 13, 1243. *Id.*

<sup>157</sup> One of those appointed, in 10 Hen. III, to assess the quinzime in Westmoreland; in 18 Hen. III (1234), a justice itinerant in Cumberland. *Id.*

<sup>158</sup> One of the justices itinerant, in same year, for Essex and Hertford. *Id.*

<sup>159</sup> Stood third of those, in same year, for Rutland. *Id.*

<sup>160</sup> A justice itinerant in 1234, and again in 1240; and from Mich., 1241, to Hil., 1245, one of the superior justices at Westminster. He died in the next year. *Id.*

<sup>161</sup> A justicier for 12 years, commencing at midsummer, 1233 (17 Hen. III), and ending at midsummer, 1245. *Id.*

<sup>162</sup> Engaged, in 7 Hen. III, in fixing the tallage, and, in 10 Hen. III, in assessing the quinzime of his county; in 18 Hen. III, at the head of the justices itinerant for Rutland. *Id.*

<sup>163</sup> Mentioned in ch. 13. § 3, p. 242. In 10 Hen. III, at the head of those selected to assess the quinzime for Norfolk and Suffolk; in 1234, a justice itinerant in two commissions. He lived beyond 1245. His wife, Petronilla, was widow of Henry de Mara, and also of William de Longchamp. *Id.*

<sup>164</sup> He was from Easter, 1236 (20 Hen. III), to Hil., 1242, a justicier at Westminster. *Id.*

and William of York, he being *at that time the oldest judge on the bench*, and perhaps the chief of the court.<sup>165</sup>

The admission, on the 6th of July, 1234 (18 Hen. III), of justices on the bench, embraced *Robert de Rokele*,<sup>166</sup> *Robert de Beauchamp*,<sup>167</sup> *Reginald de Mohun*<sup>168</sup> and *Robert de Ros*.<sup>169</sup>

<sup>165</sup> He added military to judicial duties; and he received proofs of royal confidence and favour. In 8 Hen. III, he was custos of the honor of Pec and governor of its castle, and that of Bolsover, in Derbyshire. A letter from him to Hubert de Burgh details the progress of William, earl of Albemarle, through Nottingham; and states his own intention to proceed into Northumberland. (4 Rep. Pub. Rec., App. ii, 157.) He afterwards had charge also of Oxford castle. Foss's Biogr. Jurid.

<sup>166</sup> He died about 1248. *Id.*

<sup>167</sup> Son of a baron of same name, of Hache, in Somersetshire, on whose death, about 7 John, he was left a minor, under guardianship of Hubert de Burgh. In 17 John, he was sheriff of Oxfordshire, and constable of Oxford castle. The manor and park of Woodstock were also committed to his charge; and in reward for adherence to the king he received grants of land. In 26 Hen. III, he paid 80 marks to be exempted from attending the king into Gascony. He died in 36 Hen. III, his son and heir being admitted Feb. 1, 1252. Recently the judge has been represented in the House of Lords by the Dukes of Norfolk and Somerset, and the Marquis of Hertford. *Id.*

<sup>168</sup> A descendant of William de Mohon, who, for his assistance in the invasion of England, received from William, the Norman, a large number of lordships. Reginald was son of another Reginald, and of Alicia, daughter of William Briwer. When his father died

he was a minor. During his minority he was the ward of Henry Fitz-Count until his death, in 6 Hen. III, and afterwards of his grandfather, William Briwer. He was, in 1242, and for many years afterwards, chief justice of the forests south of the Trent; and, in 1253, governor of Sauvage castle, in Leicestershire. He founded the abbey of Newenham, near Axminster, and died in 1261 or 1262. His first wife was a sister of Humphrey de Bohun, earl of Hereford and Essex; his second was Isabella, daughter of William de Ferrers, earl of Derby. *Id.*

<sup>169</sup> Second son of Robert de Ros, lord of Hamlake, in Yorkshire, and of Isabel, daughter of William, the Lion, king of Scotland. At his father's death, in 11 Hen. III, there came to him the barony of Werke, in Northumberland, with the castle founded there, and a barony in Scotland. In August, 1234 (the year in which he was associated with justices of the bench), he was appointed a justice on three iters. Three years afterwards he was constituted chief justice of the forests, and so continued, at least till 28 Hen. III. He then retired to Scotland, where, with John de Baliol, he had guidance of that kingdom. Being charged with severely and improperly treating Queen Margaret, wife of Alexander, king of Scotland and sister of Henry III, the latter sent his forces there to restore her to her rights, and imposed a fine upon him of one hundred thousand marks. Its payment was eventually remitted. *Id.*

20. *Marriage of the king's sister, in 1235; marriage of the king himself in 1236; statute passed soon afterwards, called the statute of Merton, when all the earls and barons answered quod nolunt leges Angliæ mutare. What (according to John Selden) was signified thereby as to the imperial law. Lord Coke's commendation of the judges at the time of the statute of Merton and before and some time after.*

The "writ for the collection of scutage," dated July 17, 1235,<sup>170</sup> seems to have been caused by the marriage of the king's sister.<sup>171</sup> The king himself married in the next year—January 14, 1236.<sup>172</sup>

On the 23d of that month there was a great council. Lord Coke says, in a court of the king, holden before the "archbishop of Canterbury, and other his bishops and suffragans, and before the greater part of the earls and barons of England," there assembled for the coronation of the king,<sup>173</sup> and Eleanor, the queen, certain matters were "treated for the commonwealth of the realm," and were provided and granted in a statute called the statute of Merton,<sup>174</sup> in eleven chapters, the ninth of which is as follows:

9. To the king's writ of bastardy, whether one being born before matrimony may inherit in like manner as he that is born after matri-

<sup>170</sup> Select Charters, pp. 355, 356.

<sup>171</sup> Mr. Stubbs mentions that "the chief business of the year 1235, was the marriage of the king's sister, Isabella, with the emperor, Frederick, which was discussed in the national council and made the occasion of a grant of two marks on the fee." 2 Const. Hist., ch. 14, p. 52, and note 1.

<sup>172</sup> After a long series of negotiations for alliance with ladies of France and Germany, Eleanor, the second daughter of Raymond Berenger IV, of Provence, and sister of the queen of France, accepted his offer. She was brought to England by her uncle William, bishop elect of Valence. *Id.*, p. 52. The marriage was at Canterbury. Six days afterwards the queen was crowned at Westminster. Miss Strickland's Queens of England, vol. 2, pp. 49, 50, of Phila.

edi., 1857. On the 16th of Jan., 1239, was born the prince who became Edward I. *Id.*

<sup>173</sup> He was "crowned at Gloucester on the 18th of October, in the beginning of the first year of his reign, then being about nine years old; and here it appeareth that in the 20th year of his reign he was crowned again, then being about 29 years old: twice crowned as King Henry the Second, as King John before him had been; and as King R. II after him was." 2 Inst. 79.

<sup>174</sup> So called "because the parliament was holden at the monastery of the canons regular of Merton, seven miles distant from the city of London, which monastery was founded by Gislebert, a noble Norman that came in with the Conqueror." 2 Inst. 79.

mony, all the bishops answered that they would not nor could not answer to it; because it was directly against the common order of the church.<sup>175</sup> And all the bishops instanted the lords, that they would consent that all such as were born afore matrimony should be legitimate, as well as they that be born within matrimony, as to the succession of inheritance, for so much as the church accepteth such for legitimate. And all the earls and barons, with one voice, answered, that they would not change the laws of the realm which hitherto have been used and approved.<sup>176</sup>

'*Nolle se leges Angliæ mutare, quæ hucusque usitatæ usitatæ sunt ac approbatæ.*' John Selden said: "hereby, as it were, intending to signify that the imperial laws were, with regard to the public management of inheritances and successions, by no means to be admitted."

"Lest, with regard to the succession to goods of deceased persons, so considerable a change of the laws in England as the bishops aimed at, who then earnestly recommended to us the laws of the church, though visibly taken out of the body of the imperial law, should take place; and lest other such changes should be, by an example of this nature, as is usual, with the greater facility introduced; which might also, perhaps, have given room to think that the *English* nation acknowledged the imperial law to be of some authority among them; what was thus endeavoured to be obtruded was rejected, as if the parliament had said, 'We will not that either this, or any other, head *Legum Cæsarearum*—of the Imperial laws—be admitted among us, or *nolumus mutare leges Anglicanas legibus Cæsareis*—we will not change the *English*, for the *Imperial laws*—or which amounts to the same, for the pontifical canons taken from thence. For it is evident, that, by what they said, they did not simply mean, that they would never alter the laws of England, or any part of them, they having made in this very parliament innovations in their laws, and consequently variously altered them.'<sup>177</sup>

Speaking of the time when the statute of Merton was passed, Lord Coke notes that—

"Before, and some time after, many of the judges and justices of the realm were of the clergy, as bishops, deans and priests, and all the great officers of the realm, as lord treasurer, privy seal, president,

<sup>175</sup> "In the time of Pope Alexander the Third (who lived A. D. 1160, which was anno 6 H. II) this constitution was made that children born before solemnization of matrimony, where matrimony followed, should be as legitimate to inherit unto their ancestors as those that

were born after matrimony." 2 Inst., 96, 97.

<sup>176</sup> 1 Stat. of the Realm, 4; 3 Lingard's Engl., ch. 2, pp. 172, 173.

<sup>177</sup> John Selden's dissertation '*ad Fletam*,' in 1647, ch. 9, § 2, p. 234 to 236, of Kelham's translation.

&c., were, for the most part, of the clergy, yet even in those times, the judges of the realm, both of the clergy and laity, did constantly maintain the laws of England, so as no encroachment was made on them, or breach unto them, by any foreign power."<sup>178</sup>

In another place he repeats (substantially) this observation; and names, among others, as such judges, who were men of the church, "Britton, Martin de Pateshull, William de Raleighe, Robert de Lexington, Henricus de Stanton."<sup>179</sup>

In the same statute of Merton is the following, as chapter 10:

10. "It is provided and granted that every freeman which oweth suit to the country, trything,<sup>180</sup> hundred and wapentake,<sup>181</sup> or to the court of his lord, may freely make his attorney<sup>182</sup> to do his suits for him."<sup>183</sup>

Provisions of Merton are retained in England in the Statutes Revised.<sup>184</sup>

21. *Of the queen's countrymen now in England; among whom was her uncle William, bishop of Valence, and her brother, Boniface of Savoy, who became archbishop of Canterbury. Alarm in 1236 that the foreigners were too powerful. The king's conduct. What was done or pronounced by him; and how money was raised for him. In 1240 old St. Paul's was finished.*

A number of the queen's countrymen came to England. Her

<sup>178</sup> 2 Inst., 98.

<sup>179</sup> *Id.*, 265.

<sup>180</sup> A court which consisteth of three or four hundreds, and doth not here signify a leet, or view of frank pledge. 2 Inst., 99.

<sup>181</sup> "The reason of the name was this: when any on a certain day and place took upon him the government of the hundred, the free suitors met him with launces, and he, dismounting from his horse, all rose up to him, and he holding his launce upright, all the rest, in sign of obedience, with their launces touched his launce, or weapon: for the Saxon word *wapen* is *weapon*, and *tac* is

*tactus*, or touching; and thereof this assembly was called wapentake, or touching of weapon." 2 Inst., 99.

<sup>182</sup> "Before this act every one that held by suit service ought to appear in person, because the suitors were judges in these courts, otherwise he should be amerced, which was mischievous, for it might be that he had lands within divers of those signories and that the courts might be kept on one day and he could be but in one place at one time." 2 Inst., 99.

<sup>183</sup> "Albeit, he that holdeth by suit service may make an attorney, yet that attorney cannot sit as a judge, as the

uncle, William, bishop of Valence, almost immediately acquired the greatest influence over the king; and her brother, Boniface of Savoy, became archbishop of Canterbury.<sup>185</sup>

On the 29th of April (1236) the alarm was raised that the foreigners were too powerful; the king had chosen a body of twelve sworn counsellors, *William of Valence*, at the head, without whose advice he had bound himself to do nothing; and here was an attempt to substitute the French court of twelve peers for the common council of the kingdom. The storm in the assembly of the barons rose so high that Henry had to take refuge in the Tower. Thoroughly cowed, he made promises of good government, and removed some of the sheriffs, in consequence of complaints of misbehaviour; but he persevered in his new scheme of administration, attempted to compel the bishop of Chichester to surrender the great seal,<sup>186</sup> recalled to court *Stephen Segrave*<sup>187</sup> and *Robert Passelew*,<sup>188</sup> the most unpopular of his late ministers, and allowed *Peter des Roches*, against whom he had but lately written the bitterest accusations to the emperor, to return to his see.<sup>189</sup>

Henry was now in sore want of money. On the 13th of January, 1237, *William of Raleigh*, one of his confidential clerks,<sup>190</sup> laid before an extraordinary assembly of barons and prelates, the necessity to which the king, as he said, was reduced by the dishonesty or incapacity of his late advisers. He proposed that the council of the nation should determine the mode of collecting an aid, and that the money when collected should be placed in the hands of a commission elected by the assembly, to be laid out according to the needs of the realm. The barons, either mistrusting or not understanding the vast importance of this concession, declared in reply that there was no

free suitor himself might do, for *he cannot depute another in his judicial place.*"

2 Inst., 99. "A woman may be a free suitor to the courts of the lord, but though it be generally said that the free suitors be judges in these courts, it is intended of men, and not of women." *Id.*, 119. See also Stat of Westm., 1 c. 33. 2 Inst., 225.

<sup>184</sup> Edi. 1870, vol. 1, p. 1 to 4.

<sup>185</sup> 2 Inst., 79; 3 Collyer's Engl., pp. 115, 116, of London edi., 1775; 2 Stubbs's Const. Hist., ch. 14, p. 52.

<sup>186</sup> Mr. Foss states that *Ralph de Neville* "refused to resign, alleging that he had been entrusted with the office by the parliament and could not quit it without their authority." Biogr. Jurid.

<sup>187</sup> Although the king recalled him to court after three years' absence, made him justice of Chester in 21 Hen. III, and for a time listened to his counsels, yet he was never restored to his former elevation. In the abbey of Leicester, wherein he had become a canon regular, he died, before Oct. 13, 1241. *Id.*

<sup>188</sup> Deputy Treasurer to Hen. III. *Id.*

<sup>189</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 52, 53. Bishop Peter died in his palace at Farnham, June 9, 1238, and was buried at Winchester. Foss's Biogr. Jurid.

<sup>190</sup> Mr. Foss says "he was employed to open the parliament, and by his eloquence to induce the barons to grant a subsidy to the king." *Id.*

reason for such constant demands; the king was engaged in no great enterprise; if he was poor, it was because he wasted his money on foreigners. Henry professed himself ready to make amends, to dismiss his present counsellors and accept as advisors three nobles named by the barons, and to authorize the excommunication of all who impugned the charters. In the end, a grant of a thirtieth of moveables was made by the archbishops, bishops, abbots, priors, earls, barons, knights and freeholders, for themselves and their vassals, with a provision, however, that nothing should be taken of the poor who possessed less than forty penny-worth of goods. The careful scheme adopted for the collection, by officers elected locally, affords a valuable illustration of the growth of constitutional life."<sup>191</sup>

"After" 961 St. Paul's<sup>192</sup> "was again destroyed by fire, in the year 1087; when the Norman bishop, Mamki, who had been just appointed to the see, resolved to undertake its restoration, on a much larger and more splendid scale, at his own expense. Both he and his successor, De Belmeis, each of whom presided twenty years over the diocese, are said to have devoted all their revenues to this great work; but it was not finished till the time of Bishop Niger, the fourth after De Belmeis, in the year 1240."<sup>193</sup>

22. In 1238 Michael Belet, a baron of the Exchequer; Ralph de Neville still the chancellor. As to custody of the Great Seal and profits of the chancellorship until his death. Articles in 23 Hen. III (1239), against Hubert de Burgh; answers thereto; and result of the case.

Michael Belet<sup>194</sup> has, on the authority of a writ attested by him in

<sup>191</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 53, 54. "*Carta Confirmationis Regis Henrici III, xxviii die Januarii, A. R. XXI*," is in 1 Stat. of the Realm, edi. 1810, p. 28; and in Mr. Stubbs's volume of Select Charters, pp. 356, 357. The writ of July 2, 21 Hen. III, 'for the collection of the thirtieth,' is in same volume, p. 357 to 359. "The sum raised was 23,891 marks, two shillings and a penny. But the hope of peace and reform was premature. William of Valence indeed left England, but no sooner had the king secured a revenue for the year than by his secret invitation the legate Otho, who had been repelled by the nation in 1226, arrived, on the plea of carrying out necessary reforms in church and state. He held an im-

portant council in November, and shewed a wise moderation, but the archbishop, not trusting appearances, went to Rome immediately afterwards to procure his recall." 2 Stubbs's Const. Hist., ch. 14, p. 54.

<sup>192</sup> Of which there is mention in ch. iv, § 5, p. 85.

<sup>193</sup> In 1135, indeed, the uncompleted building had again caught fire and been nearly burned to the ground. When the fabric, which might thus be called ancient, even while it was yet new, at last stood ready for consecration, it exhibited a mass 690 feet in length by 130 in breadth, surmounted by a spire 520 feet in height. Some additions which were made to it after this, were not completed till 1315, in the reign of Edward

22 Hen. III (1238), been included among the barons of the court of exchequer.<sup>195</sup>

There were evidences of the king's favour to Ralph de Neville in 13, 16 and 17 Hen. III;<sup>196</sup> disfavour came after the death of Peter de Rupibus (or des Roches), in 1238.<sup>197</sup> The king desiring that Peter should be succeeded in the bishopric of Winchester by *William de Valence*, was greatly dissatisfied when the chapter of Winchester selected for that bishopric, first, *William de Raleigh* (mentioned in § 12, pp. 303, 304), and, secondly, *Ralph de Neville*; the king took away the great seal from him, and committed it to the custody of *Geoffrey*, the Templar, and *John de Lexington*,<sup>198</sup> reserving, however, to *Ralph de Neville* the profits of the office. Afterwards it was in the hands of the king's favorite, *Simon Normannus* (or de Cantilupe) arch-

II, the ninth king after him, in whose reign the first stone of the pile had been laid. This was the building we now call old St. Paul's, the immediate predecessor of the present cathedral." Penny Magazine for 1832, May 12, p. 57.

<sup>194</sup> "He executed the office of chief butler at the marriage of King Henry, in the 26th year of his reign, and founded the priory of Wroxton for canons of the order of St. Augustin." Foss's Biogr. Jurid.

<sup>195</sup> *Id.*; citing Madox ii, 317.

<sup>196</sup> Legal Judicat. in Ch., pp. 198, 199, of edi. 1727. The charter granting to him the chancery for his life, was renewed in 13, 16 and 17 Hen. III. There was also a charter of June 14, 16 Hen. III, granting to him the custody of the Great Seal during his life, and enabling him to appoint a deputy. Moreover, he was granted the chancellorship of Ireland for life, G. de Turville being appointed to act as his deputy there. Foss's Biogr. Jurid.

<sup>197</sup> Peter died in his palace at Farnham June 9, 1238, and was buried at Winchester. *Id.* As to the king's disfavour of Ralph, the period where it began, seems to be stated with more

precision in Foss's Biogr. Jurid. than in Green's Hist. of Engl. Peop., book 3, ch. 3, p. 271 of vol I.

<sup>198</sup> He was evidently an officer connected with the court, and probably one of the clerks of the chancery, the Great Seal having been several times placed in his hands apparently in that character—viz: in 1238, in 1242, in 1249 and in 1253. Within these years he went to Rome on the king's business, and performed other duties in connection with the court. In 1241 he had the custody of Geoffery, Prince of Wales, in the Tower of London; and, in 1247, he is spoken of as the king's seneschal. Entries show that he was on the judicial bench in June, 1248, and afterwards till Dec., 1256. He was one of those appointed, in 1251, to hear pleas in the city of London, and is mentioned as sent, in 1254, by the king and council to pronounce a judgment '*ad bancum domini regis*.' In 37 Hen. III, he was made chief justice of the forests north of the Trent, and governor of the castles of Bamburgh, Scarborough and Pickering. He died in Feb., 1257. Foss's Biogr. Jurid.



deacon of Norwich, until, in the next year (1239), he was dismissed from office and expelled the court.<sup>199</sup> Whereupon it was in custody of *Richard Crassus*,<sup>200</sup> till his election as bishop,<sup>201</sup> in 1242, when he resigned it. Speaking of *Silvester de Everdon*,<sup>202</sup> as engaged in the king's service (in the same way as the clerks of the Exchequer or Treasury were) and called '*clericus noster*,' Mr. Foss says: "It was no doubt in this character that he had the custody of the great seal, when the king, on May 5, 1242, confided to the archbishop of York the government of the kingdom during his absence in Gascony." Of *Ralph de Neville*, Mr. Foss says, that from this year (1242) "till his death, there are several documents to which his name is attached with the title of chancellor."<sup>203</sup>

In 22 Hen. III, the king again became offended with *Hubert de Burgh*; the royal indignation, may have been for a time appeased, but in 23 Hen. III (1239), was manifested in articles; which Hubert answered.<sup>204</sup>

It is stated "that Hubert sufficiently proved his innocence to all

<sup>199</sup> He was also removed from all his preferments, except the archdeaconry; the corn of his church of Rossington being seized, he was allowed to redeem it on finding security for 50 marks. The cause of his dismission is said to have been his refusal to seal a patent, granting to Thomas, earl of Flanders, a tax of four pence upon every sack of wool transported from England into his dominions. He died in 1249. Foss's Biogr. Jurid.

<sup>200</sup> Prior of Henley in Buckinghamshire, before he became abbot of Evesham. *Id.*

<sup>201</sup> Of Lichfield and Coventry (or Chester, as it was then sometimes called,) in 1242. Before consecration he died at Riola, in Gascony, Dec. 8, 1242. *Id.*

<sup>202</sup> As one of the king's chaplains, he appears as a witness to charters granted in 7 and 9 John. In 8 Hen. III (1224), he is demandant of a virgate of lands

claimed by him as belonging to his church of Everdon, in Northamptonshire. *Id.*

<sup>203</sup> "The highest character is given him by contemporary historians, not only for his fidelity to his sovereign in times of severe trial, but for the able and irreproachable administration of his office. He was as accessible to the poor as to the rich, and dealt equal justice to all. To his church he was a signal benefactor, defending its rights on many occasions, obtaining various grants for its benefit, dividing large sums to the repairs of the cathedral, increasing the endowments of the dean and chapter, and bequeathing to his successors the estate he had purchased, and the palace he had erected in London." *Id.*

<sup>204</sup> 1 State Tr., 13; citing Matth. Paris's Hist., 516, and Additamenta, 151; 1 Brady, appendix No. 152.

who heard him, in spite of all the exertions on the part of the king to establish his guilt; but yet that, to appease the king's anger and rancour against the earl, it was adjudged that the earl should resign to the king four of his castles, of which he was particularly fond, namely: Blanch, Grosmond, in Wales, Skenefrith and Hatfield."<sup>205</sup>

23. *Of William de Haverhull, treasurer in (and perhaps before and after) 1242; and of others appointed barons of the exchequer and justices itinerant in 1240 and the five succeeding years.*

In speaking of Hugh de Pateshull, the treasurer, mentioned in § 18, p. 315, Mr. Foss says there is "no notice of any successor being appointed till 24th July, 1240." The successor then appointed may have been *William de Haverhull*.

Among the barons of the exchequer in 27 Hen. III (1242), *Richard de Barking*<sup>206</sup> stands immediately after William de Haverhull, the treasurer. According to Madox (ii, 318), *Ralph de Ely* was a baron of the exchequer in 24 and 27 Hen. III; *Peter Grimbold*, in 25 Hen. III; and *John le Fraunceys* (or Francigena),<sup>207</sup> from 27 to 42 Hen. III (1243-57).<sup>208</sup>

In 1240, when the king sent justices itinerant through all the counties, under pretence of redressing grievances, but with the real object of extorting money from the people, *Robert de Lexinton* (mentioned in § 19, p. 317) was placed at the head of those assigned

<sup>205</sup> 1 State Tr., 22; citing M. Paris. His eventful life closed May 12, 1343 (27 Hen. III), at Banstead in Surrey. He was buried within the church of the Preachers, or Black Friars, in Holborn, to which he had been a large benefactor. Among his pious donations was a grant to that fraternity of his palace at Westminster; afterwards purchased by the archbishop of York, and since known by the name of Whitehall. Foss's Biogr. Jurid.

<sup>206</sup> Raised from the office of prior to that of abbot of Westminster in Sept., 1223. In 27 Hen. III (1242), he alone tested the mandates issued to the sheriffs to get in the scutage money for the king's voyage into Gascony. Mr. Foss

mentions that "about 1245, he was, at the royal intercession, excused from his attendance on a general council (called by the pope) because he and the bishop of Carlisle were the king's deputies or regents of England when he went abroad." He died Nov. 23, 1246. His character was that of a prudent, learned and religious man. Foss's Biogr. Jurid.

<sup>207</sup> An escheator in the north of England. *Id.*

<sup>208</sup> He may, for some short time, have been one of the regular justices, as assizes were ordered to be taken before him in Cumberland and Norfolk, in July, 1254, and July, 1255. He died in 52 Hen. III. *Id.*

for the northern counties.<sup>209</sup> In that year Ralph de Sudley<sup>210</sup> is the second named of the justices before whom a fine was acknowledged at York. Two others were Warner Egaine<sup>211</sup> and *Robert de Haya*.<sup>212</sup>

In the same year *Henry de Bathonia*<sup>213</sup> stood second on, and *Gilbert de Preston*<sup>214</sup> at the bottom of, the list of those sent through the southern counties.<sup>215</sup> *Roger de Thurkilby* was also one of the four appointed in that year for the southern district.<sup>216</sup>

In 27 Hen. III (1243), *Robert de Esseby* (sometimes called Esseburne) appears in the acknowledgment of a fine.<sup>217</sup>

*John de Cobbeham*<sup>218</sup> was raised to the bench about 28 Hen. III.<sup>219</sup> *Robert de Nottingham* had fines acknowledged before him in 1245.<sup>220</sup>

*Henry de Bracton* is said to have been a justice itinerant in 1245 and 1246 (29 Hen. III).<sup>221</sup>

24. *Peers early summoned to parliament. Important proceedings in parliament in Jan. 1242. Further advance by the barons in 1244. How the discussion ended.*

Although the earliest summons of peers to parliament was, at one

<sup>209</sup> He is at the head of his associates in subsequent entries of his acting as judge, but they do not extend beyond Hil., 27 Hen. III. Probably he then retired, having been on the bench nearly 24 years. He died in June, 1250, leaving as his heir his brother John. Foss's Biogr. Jurid.

<sup>210</sup> Of a noble English family, older than the conquest, whose chief seat was at Sudley, in Gloucestershire. *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> His name first appears in 1238 (22 Hen. III) in the acknowledgment of a fine. From 1240 the fine roll teems with payments for writs of assize to be taken before him. *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> It is thought that *Gilbert de Preston* was raised to the bench before Feb. 2, 26 Hen. III, as fines were levied before him from that time; and in Easter, of the same year, his name appears on the

pleas of the bench. Till the end of this long reign, no year occurs in which payments are not made for writs of assize to be taken before him. *Id.*

<sup>216</sup> Less than two years afterwards fines were levied before him, and so continued to be till just before his death—viz: from Mich., 1241, to Mich., 1259. *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> Eldest son of Henry de Cobbeham (mentioned in § 6, p. 285). This son was, in 20 Hen. III, constable of Rochester castle; and from 26 to 32 Hen. III, held the office of sheriff of Kent with Bertram de Criol. *Id.*

<sup>219</sup> Fines being levied before him from Easter in that year, 1244, till Michaelmas, 1250, during which time also writs of assize were frequently directed to him. *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*; citing Dugdale. See also I Spence's Eq., 119, note (a.)

time, thought to be that of 49 Hen. III, yet they were in parliament before that year.<sup>222</sup> In expectation of a war in France, to which he was summoned by his stepfather (Hugh of La Marche), Henry called his bishops and barons to London on the 28th of January, 1242. The proceedings are of singular importance, both in form and substance.<sup>223</sup>

"Earl Richard,<sup>224</sup> archbishop *Walter Gray*,<sup>225</sup> and the provost of Beverley came before the assembled body, which contained all the prelates, in person or by proxy, all the earls and nearly all the barons, and delivered the king's message requesting aid for the recovery of his foreign possessions."<sup>226</sup> "They replied that before the king went to war, he would do well to await the termination of the truce by which he was bound to France, and try to prevail on Lewis to do the same. If the king of France refused, then the question of aid might be entertained. They had, they said, been very liberal in former years: very early in the reign they had given a thirteenth, in 1225 a fifteenth, in 1232 a fortieth, a very great aid for the marriage of Isabella in 1235, and a thirtieth in 1237; besides carucages, scutages and tallages. The grant of 1237 had been made under special conditions as to custody and expenditure; no account of it had been rendered; it was believed to be still in the king's hands. Besides these extraordinary sources of revenue, the king had enormous resources, in the escheats, the profits of vacant churches and the like; and for five years the itinerant justices had been inflicting fines which impoverished the innocent as well as the guilty. If, however, the king would wait for the expiration of the truce, they promised to do their best. Henry, professing himself satisfied with the reply, asked next, what, if he should wait, their grant would be: they answered that it would be time to consider when the case arose; as for the promises of reform with which he tried to stim-

<sup>222</sup> Turner's Hist. of Anglo-Saxons, book 8, ch. 4, pp. 166, 167 (with note 9), of edi. 1852. Sir *Robert Cotton*, after the passage as to John, quoted in ch. 13, § 5, p. 246, says: "From this there is a break, until 18 Hen. III, where the next summons extant is in a plea roll of that year, but the ordinances are lost." Harl. Miscel., vol. 8, p. 218, of Lond. edi. 1810.

<sup>223</sup> They were formally recorded, and are the subject of the first authorized account of a parliamentary debate. 2 Stubbs's Const. Hist., ch. 14, p. 58.

<sup>224</sup> The king's brother.

<sup>225</sup> Mentioned in ch. 13, §§ 5, 6, pp. 249, 250, and in this chapter in § 3, pp. 279, 280. His character for wisdom, prudence and integrity was so high, that in 26 Hen. III, 1242, though at a very advanced age, he was left by Queen Eleanor, then regent, in the government of the kingdom when she went to join her husband in France. Foss's Biogr. Jurid.

<sup>226</sup> The assembly seems to have laboured under none of the reticent cautious modesty that prompted the parliaments of Edward III. 2 Stubbs, 59.

ulate their liberality, they said they were not disposed to try the question with the king,—they knew too well how he had kept the engagements made in 1237.<sup>227</sup>

"The political history of 1244 shows a steady advance made by the barons from their position in 1238 and 1242"—Henry "had to act as his own spokesman in order to avoid a flat contradiction. He had, he said, gone to Gascony by the advice of his barons, and had there incurred debts from which, without a liberal and general grant, he could not free himself. The magnates replied that they would take counsel; the prelates, the earls and the barons, all three deliberated apart. After some discussion the bishops proposed to the lay nobles that they should act conjointly; they knew one another's minds, the prelates would draw up the answer if the barons would assent. The barons answered that they would do nothing without the assent of the whole body of the national council. Thereupon a joint committee was chosen to draw up the reply. This committee consisted of twelve members, four chosen by each of the three bodies, the prelates, earls and barons. The bishops were represented by Boniface, the primate elect; *William Raleigh*, bishop of Winchester, who had once been the king's minister, but had since then been the object of his vindictive persecution;<sup>228</sup> the bishop of Lincoln, *Robert Grosseteste*; and the bishop of Worcester, *Walter*

<sup>227</sup> 2 Stubbs's Const. Hist., ch. 14, p. 59. This appears to be 'an early and very important instance of an aid being absolutely refused.' Select Charters, p. 359 to 361. "Unable to draw out a distinct answer, and hopeless of obtaining a general grant, Henry then called the prelates and barons singly, and tried to make a separate bargain with each. So, although the council broke up without coming to a vote, he contrived by force, fraud or persuasion, to raise a large sum, with which he equipped an expedition. He then declared the truce broken, sailed from Portsmouth at Easter, and after an ignominious campaign, in which he escaped capture only through the moderation of Lewis and the counsel of Richard, sent home his forces. He remained in Gascony until September, 1243, leaving England under the archbishop of York, who contrived to ameliorate the condition of the realm whilst he could, and to prevent any undue exactions in the king's name." 2 Stubbs, 60. This may have been the

period when *Walter Mauclerk* (mentioned in § 17, p. 312,) and *W. de Cantilupe* are said to have been united with *Walter de Grey* in the government of the kingdom during the royal absence. *Walter Mauclerk* resigned the bishopric of Carlisle June 29, 1246, and took the habit of a preaching friar at Oxford, where he remained till his death, Octo. 28, 1248. *Walter de Grey*, after being archbishop of York about forty years, died at Fulham May 1, 1258. His remains were removed to his cathedral, where a splendid monument was erected to his memory. Foss's Biogr. Jurid.

<sup>228</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 61, 62. *William de Raleigh* is mentioned in § 22, p. 324. After the choice by the chapter of Winchester was made void, the see remained vacant for three or four years longer. The monks then proceeded to a third election, when persisting in the nomination of *William de Raleigh*, their choice was confirmed by the pope on September 13, 1243. Foss's Biogr. Jurid.

*Cantilupe*,<sup>229</sup> who, throughout the long contest that followed, never deserted the cause of freedom. The earls of Cornwall, Leicester, Norfolk<sup>230</sup> and Pembroke, represented their brethren; the barons chose *Richard of Montfichet*,<sup>231</sup> one of the few survivors of the twenty-five, and *John of Balliol*, with the abbots of S. Edmund's and Ramsey. Their reply to the king stated that the charters, although often confirmed, were never observed; that the money so freely given had never been spent to the good of the king or of the realm; and that, owing to the want of a chancellor,<sup>232</sup> the great seal was often set to writs that were contrary to justice. They demanded, therefore, the appointment of a justiciar,<sup>233</sup> a treasurer<sup>234</sup> and a chancellor, by whom the state of the kingdom might be strengthened. Henry refused to do anything on compulsion, and adjourned the discussion. It was, however, agreed that if the king would, in the meantime, appoint such counsellors, and take such measures of reform as the magistrates could approve, a grant should be made, to be expended under the supervision of the joint committee. Henry was very much disinclined to accept these terms, and in order to

<sup>229</sup> This second son of *William de Cantilupe* was educated for the church, and in 10 John was presented to the living of Eytton: in the course of the next eight years he had no less than seven benefices, besides a prebend in the church of Lichfield. In 16 Hen. III (1231), he was one of seven justices itinerant named for several counties. In August, 1236, he was elected to the bishopric of Worcester; and afterwards accompanied by *William Longspee*, earl of Salisbury, went to the Holy Land, whence he had now returned. Foss's Biogr. Jurid.

<sup>230</sup> *Roger Bigot*, the fourth earl of Norfolk, was son of Hugh, the third earl, and Matilda, his wife, one of the daughters of *William Mareschall*, earl of Pembroke, and married Isabella, sister of Alexander, king of Scotland. By the death of the last of the four sons of that earl, their inheritance devolved on their five sisters, of whom Roger's mother was the oldest. To her share the marshalship of England fell, which she transferred to Roger, as her eldest son; the king soon after confirming him in the office. *Id.*

<sup>231</sup> See § 12, p. 302. He died in 52 Hen. III (1268). *Id.*

<sup>232</sup> See § 22, p. 324, as to *Ralph de Neville*. His death occurred Feb. 1, 1244, at the magnificent mansion he had erected for the residence of himself and his successors, bishops of Chichester, while in London. It was situate '*in vico novo ante Novum Templum*' (Rot. Claus. i, 107), now called Chancery Lane, and becoming afterwards the hospitium or inn of the earls of Lincoln, was ultimately transferred to the students of the law. The memory of the original founder is preserved in the name of the lane, corrupted from Chancellor's Lane; and in that part of the estate which remains to the see, and is called Chichester Rents. *Id.*

<sup>233</sup> As to *Hubert de Burgh*, see § 18, p. 315. As there stated, he died May 12, 1243. *Id.*

<sup>234</sup> As to *Hugh de Pateshull* see § 18, p. 315. *Peter Chaceporc*, called in a patent '*cognatus regis*', was constituted king's treasurer in 26 Hen. III, and was keeper of the king's wardrobe from 29 to 37 Hen. III. The wardrobe appears to have been used as one of the royal treasuries, and a certain class of fines was commonly paid into it. *Id.*

detach the bishops from the league, produced a papal letter, ordering them to vote a liberal subsidy. They postponed their answer, however, until the general question was settled; and when, after the departure of the lay barons, the king renewed his application, both by messengers and in person, Grosseteste closed the discussion by reference to the agreement made with the barons: "We may not be divided from the common council, for it is written, if we be divided, we shall all die forthwith."<sup>235</sup>—"The discussion ended in a compromise; a scutage of 20 shillings was granted for the marriage of the king's eldest daughter. Other aid the barons unanimously refused to grant."<sup>236</sup>

25. *Of the council of Lyons in 1245; appointment in that year of treasurers of a new Exchequer. Names of justices in 1246, 1247, 1248 and 1249.*

"The council of Lyons, in which Innocent IV deposed Frederick II, and in which *Roger Bigot*, and others representing the '*communitas*' of the realm of England, made a bold but vain demand for the relaxation of papal tyranny—and even attempted to repudiate the submission of John,—concentrated the gaze of the world in 1245."<sup>237</sup>

*Edward de Westminster*<sup>238</sup> and the abbot of Westminster were, in 30 Hen. III, appointed treasurers of a new Exchequer the king had founded for receipt of moneys for the fabric of the church at Westminster.<sup>239</sup>

<sup>235</sup> 2 Stubbs's Const. Hist., ch. 14, p. 61 to 63. Matthew Paris has preserved, under the same year, a scheme of reform, which may have been brought forward at the time, according to which "a new charter was to be drawn up, embodying and strengthening the salutary provisions of the old one, and to be proclaimed under the same sanctions: the execution of it was not to be left to the royal officers, but to be committed to four counsellors chosen by common assent, and sworn to do justice. Of these four, two at least were to be in constant attendance on the king to hear all complaints, and find speedy remedies, to secure the safe custody of the royal treasure, and the proper expenditure of money granted by the nation, and to be conservators of all

liberties; two of them are to be the justiciar and chancellor, chosen by the whole body of the realm. Two justices of the bench, and two barons of the exchequer, are also to be appointed, in the first instance, by general election, afterwards by the four conservators." *Id.*, p. 63.

<sup>236</sup> *Id.*, p. 63.

<sup>237</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 63, 64.

<sup>238</sup> This son of Odo, the goldsmith, purchased, in 24 Hen. III (1240), the office of fusor or melter of the Exchequer. Foss's Biogr. Jurid.

<sup>239</sup> Or, as they are called in another record, custodes of the operations there. In 1248 *Edward* is mentioned by Madox as among the barons sitting at the exchequer; and the seal of the office of

In the circuits from 1245 to 1256, *Roger de Thurkilby* (mentioned in § 23, p. 327) was invariably placed at the head of the commission for the counties he visited, except when a bishop or abbot was joined.<sup>240</sup>

Among the justices in (or from about) 1246, were *Simon de Wauton*,<sup>241</sup> *Jeremiah de Caxton*<sup>242</sup> and *Alan de Watsand*<sup>243</sup> (or Wassand); in 1247, *Henry de Bathonia*<sup>244</sup> and *William de Wiltin*,<sup>245</sup> in 1248, *John de Lexinton*,<sup>246</sup> *Henry de Mara* (or de la Mare)<sup>247</sup> and *Reginald de Cobbeham*.<sup>248</sup>

chancellor of the exchequer is placed in his custody. In 37 Hen. III, he and Philip Luvel were directed by the king to remove all his gold and silver and jewels from Westminster and the New Temple to the Tower of London, but to leave the regalia at Westminster. So late as 48 Hen. III, he is mentioned as a baron of the Exchequer. He died before 51 Hen. III. *Id.*

<sup>240</sup> Foss's Biogr. Jurid.

<sup>241</sup> Born at Wauton or Walton Deyville, in Warwickshire. He was brought up to the clerical profession, to which, according to the fashion of the times, he united the study of the law. He was justice itinerant in the northern counties in 30 Hen. III, (1246) and performed the same duty in 1249 and 1250 in other parts of England. He was, in 1247, raised to the judicial bench, and was on it till some time in 1257. In his circuits of 1253 and 1255 he stood at the head of his commissions, except that in the last an abbot was placed before him (it is said) 'for ornament.' *Id.*

<sup>242</sup> He was a justicier in 30 Hen. III; and assizes were directed before him in 28 and 31 Hen. III. In 32 Hen. III he was one of the custodes of the archbishopric of Canterbury during its vacancy. In 37 Hen. III, he was holding pleas before the king with *Henry de Britton*. Foss's Biogr. Jurid.

<sup>243</sup> On the bench from about 1246 (30 Hen. III), till his death in Nov. or Dec.,

1257. *Id.*

<sup>244</sup> His position in 1238 and 1240 is mentioned in § 23, p. 327. In Nov. 1247 he stands in a higher place, an amerciament being mentioned as made before him and his companion justices of the bench. In the circuits of that and the next two years, his name is at the head in every county which he is appointed to visit. *Id.*

<sup>245</sup> He had fines levied before him in Trin., 1247 (31 Hen. III), and the next two years. In 1248 and 1250 he acted as a justice itinerant, as his brethren did. *Id.*

<sup>246</sup> In 1248 (32 Hen. III) and afterwards, till Dec. 1256, there are numerous entries of payments for assizes to be taken before him. In 1251 he was one of those appointed to hear pleas in the city of London; in 1254 he is mentioned as sent by the king and council to pronounce a judgment '*ad bancum domini regis*.' In 37 Hen. III, he was chief justice of the forests north of the Trent, and governor of the castles of Bamburgh, Scarborough and Pickering. He died in Feb., 1257. *Id.*

<sup>247</sup> He was on the bench before 1248 (32 Hen. III), and until 1256. The castle and manor of Marlborough were committed to him in 38 Hen. III. He died in 1257. *Id.*

<sup>248</sup> This (the second) son of Henry de Cobbeham, was a justice itinerant in 32 Hen. III (1248), for Essex and Surrey



26. *Parliaments and events from 1246 to 1249. Demand that the common council of the realm shall appoint a justicier, chancellor and treasurer.*

"The wrongs of the church form, for a time, the chief matter of debate in the national gatherings. A parliament held at Westminster, May 6, 1246, drew up a list of grievances which were sent to the pope with special letters from each of the great bodies present, the king, the bishops, the abbots and the earls, with the whole baronage, clergy and people. Another parliament sat in July to receive the answer."<sup>249</sup>

"The parliamentary history of" several "following years is of the same complexion: the councils meet and arrange fresh lists of grievances."—"Now and then the king and his people seem to be drawn more closely together."<sup>250</sup>

"The events of these years may be briefly summed up: in 1247, in a Candlemas session, new protests were made against papal exactions, to which the prelates were, at Easter, obliged to yield. The same year Henry tried to restrict, by law, the ecclesiastical jurisdiction in temporal matters, such as breaches of faith, title suits and bastardy, and to confine it to matrimonial and testamentary causes. In 1248, the constitutional struggle began again, partly provoked by the arrival of a new brood of foreigners, half-brothers of the king. At a very great parliament held on the 9th of February, money was asked and grievances registered as usual: the demand for a justicier, chancellor and treasurer, appointed by the common council of the realm, was again made, and declared to be based on the precedent of former reigns. Henry replied with general promises; and the barons rejoined with general professions, made contingent on his fulfilment of his promises. After a delay of five months, he returned an arrogant refusal: the servant was not above his master, he would not comply with the presumptuous demand; yet money must be provided. The answer of the barons was equally decided."<sup>251</sup>

At Easter, 1249, the annual debate was repeated. Again the appointment of the three great officers was demanded, but in conse-

and in the next year for Kent, Middlesex, Hampshire and Wiltshire. He was appointed sheriff of Kent in 33 Hen. III, and while holding the sheriffalty was appointed governor of Dover castle and warden of the Cinque Ports. He continued to hold the sheriffalty until his death, Dec. 14, 1257. *Id.*

<sup>249</sup> 2 Stubbs's Const. Hist., ch. 14, p. 64.

<sup>250</sup> *Id.*, p. 64.

<sup>251</sup> 2 Stubbs's Const. Hist., ch. 14, p. 65.

Henry, in his disappointment, turned his anger against his foolish advisors. They proposed that he should sell his jewels to the citizens of London. The king, however, thinking that if the Londoners were rich enough to buy the jewels they might afford to help him freely, kept his Christmas at London, taking large sums as new year's gifts. *Id.*, p. 66.

quence of the absence of earl Richard, who had taken the side of the barons, nothing was done.<sup>252</sup>

27. *Names of justices appointed in 1250, 1251 and 1252; among them are Henry de Bracton, Robert de Brus, Silvester de Everdon and Gilbert de Preston.*

*Henry de Bathonia* (mentioned § 25, p. 332), had, in 1250, a grant of £100 a year for his support '*in officio justiciarii*;' he then sat as the senior of his fellows.<sup>253</sup>

*Henry de Bracton* (or Bretton), mentioned in § 23 as a justice itinerant in 1245 and 1246, was in 1250, on the bench at Westminster.<sup>254</sup>

*John de Gatesden*, who held the office of sheriff of Surrey and Sussex in 20 Hen. III, and the three following years, is mentioned in

<sup>252</sup> 2 Stubbs's Const. Hist., ch. 14, p. 66. The next year, under the pressure of debt and poverty, Henry took the cross, begged forgiveness of the Londoners, whom he never ceased to molest by interference with their privileges, as well as by extortion of money, and issued a stringent order for the reduction of his household expenses, in order that his debts might be paid, consoling himself with a heavy exaction from the Jews. The king's economical resolutions lasted over the following Christmas; but his savings were chiefly devoted to enriching his half-brothers, for one of whom, Ethelmar, he had obtained by personal advocacy the election to the see of Winchester. *Id.*

<sup>253</sup> From Nov., 1250, till August, 1253, he seems to have been out of the king's favour; without having resigned, he seems to have been out of service during this period. Afterwards applications to him for writs of assize were frequent for the rest of his life. Foss's Biogr. Jurid.

<sup>254</sup> He was then present as one of the '*justiciarii*,' at a final concord made before the king himself. Yearly, from 1250, there are on the fine roll entries of

payments for assizes to be taken before a regular justicier, whose name is spelled sometimes Bretton, but more frequently Bratton; they continue principally with this name (Bratton) till July, 1267. Thus it is clear that Bretton and Bratton are synonymous; and there is little question that Bracton is the same with both. Prince, in his '*Worthies of Devon*,' designates the village in that county in which he supposes Bracton to have been born, as '*Bracton, now Bratton Clovelly*,' a name it still retains. Collinson (Somersetsh. ii, 32) derives the name from Bratton, a hamlet of Minehead, where the family had property. According to Prince, he studied at Oxford, where he took the degree of doctor of both laws. He was certainly of the clerical profession: he is designated '*dilectus clericus noster*' by the king in a grant to him May 25, 1254, of the use of a house in London, belonging to William, late earl of Derby, during the heir's minority. On Jan. 21, 1263, he was collated to the archdeaconry of Barnstable, but he resigned it in the next year. Foss's Biogr. Jurid.

Dugdale's list of justiciers of the Common Pleas in 34 Hen. III; and also as a justice itinerant into Lincolnshire.<sup>255</sup>

*Robert de Brus*<sup>256</sup> was a justicier in 1250.<sup>257</sup>

*Nicholas de Turri* was a justicier in 35 Hen. III (1251).<sup>258</sup>

*Gilbert de Segrave*<sup>259</sup> was raised to the bench at Westminster in the same year (35 Hen. III).<sup>260</sup>

*Robert Walerand*<sup>261</sup> was a regular justicier from June, 1251.<sup>262</sup>

<sup>255</sup> He is again mentioned as a justicier in 38 Hen. III. He and the bishop of Ely were sent as ambassadors to Spain on the king's affairs in 40 Hen. III. He died in April, 1262 (46 Hen. III), leaving large property in Sussex and Somersetshire. *Id.*

<sup>256</sup> The fifth lord of Annandale, to which he succeeded, in 29 Hen. III (1245), on the death of his father, Robert the Noble, who, by his marriage with Isabel, second daughter of Prince David, earl of Huntingdon and Chester, grandson of David I, king of Scotland, became one of the greatest subjects in Europe. Foss's Biogr. Jurid.

<sup>257</sup> From June till October, 1250, there are entries of payments made for assizes to be taken before him; his name upon fines shows that he acted as a justicier at that time. There is then an interval of seven years. *Id.*

<sup>258</sup> Payments for assizes before him are from March in that year, and continue uninterruptedly till May, 1270, 54 Hen. III. In the iters of 46 and 47 Hen. III, he stands at the head of all the commissions on which he is named. *Id.*

<sup>259</sup> The son of Stephen de Segrave by Rohese, daughter of Thomas le Despensser, married Amabilia, daughter and heir of Robert de Chaucomb. He had, in 15 Hen. III, a grant from Simon de Montfort, lord of Leicester, of the town of Kegworth, in Leicestershire; and, a short time after, was constituted gov-

ernor of Bolsover castle. In 26 Hen. III, he was justice of the forests south of Trent, and governor of Kenilworth castle. *Id.*

<sup>260</sup> And was one of the justiciers appointed to hear such pleas of the city of London as were wont to be determined by justices itinerant. He is not noticed in a judicial character after January, 1252. In 1254 he was on a mission into Gascony, on his return from which, in company with John de Plessetis, earl of Warwick, and other nobles, they, although bearing the King of France's letters of safe conduct, were seized and imprisoned at Pontes, a city in Poitou. Ultimately he was released, but his sufferings there impaired his health, and caused his death, which happened shortly before Nov. 11, 1254 (39 Hen. III.) *Id.*

<sup>261</sup> He was frequently in the king's service, particularly in the Welsh wars. He had custody in 30 Hen. III (1246) of the lands and castles of William Mareschall, late earl of Pembroke; and in the next year of those of John de Munchanes. In 34 Hen. III (1250), the castles of Carmarthen and Cardigan, with the lands of Meilgon Fitz-Meilgon, were committed to his charge at the small annual rent of 40 marks. *Id.*

<sup>262</sup> With slight (if any) interruption till August, 1258. He is described as the king's seneschal in 36 Hen. III and succeeding years. *Id.*

*Giles de Erdington* was a judge before August, 1251 (35 Hen. III).<sup>263</sup>

*Adam de Hilton* was the last named of four justices itinerant in 35 and 36 Hen. III (1251-2).<sup>264</sup>

*Silvester de Everdon*, bishop of Carlisle (mentioned in § 22, p. 325), acted in 1251 and 1252 as a justice itinerant in the counties of York, Nottingham, Derby, Warwick and Leicester.<sup>265</sup>

*Robert de Ripariis* (Rivers) is recorded as a justice itinerant in 36 Hen. III (1252), into Berkshire, Oxford and Northampton.<sup>266</sup>

*Henry de Coleville*<sup>267</sup> acted in 1252 as justice itinerant for Berkshire, Oxford and Northampton; and in the next year for Cambridge, *Huntingdon*, Essex and Hertford.<sup>268</sup>

*Simon de Trop* (or Thorpe)<sup>269</sup> was, from 1252 to 1256, a justice itinerant in several counties.<sup>270</sup>

*William Trussel*<sup>271</sup> was constituted a justicier (Dugdale says of the Common Pleas) Sept. 3, 1252.<sup>272</sup>

*Roger de Whitchester*<sup>273</sup> was raised to the bench at least as early as Octo. 9, 1252 (36 Hen. III).<sup>274</sup>

<sup>263</sup> He retained his place on the bench till Dec., 1267, soon after which he died. Foss's Biogr. Jurid.

<sup>264</sup> Appointed to visit Yorkshire and several other counties. An instance of payment for a writ of assize to be taken before Alan de Watsand and him in Yorkshire, indicates that he was one of the regular justiciars. *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> Employed in 18 Hen. III to assess the tallage in Cambridge and Huntingdon; and twice appointed sheriff for those counties—in 21 Hen. III, when he held the office for six years; and again in 34 Hen. III, when he held it for two. *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> From the place in Northamptonshire, which was in those times as often spelled Thorpe as Trop. Foss's Biogr. Jurid.

<sup>270</sup> He died in Jan., 1259 (43 Hen. III). *Id.*

<sup>271</sup> In 26 Hen. III, concerned in a suit relative to property in Warwickshire. *Id.*

<sup>272</sup> And fines were acknowledged before him till Nov., 1254, in which year he went as one of the justices itinerant into the counties of Gloucester and Stafford. He continued to act as a judge till Sept., 1257. *Id.*

<sup>273</sup> So named from that place in Northumberland. He was probably the son of Robert de Whitchester, who was sheriff of that county in 5 and 6 Hen. III. *Id.*

<sup>274</sup> That being the date of the first entry of payments made for assizes to be held before him. These entries continue till Aug., 1258 (42 Hen. III); and he went the circuit from 1254 to 1257. He is mentioned as a canon of St. Paul's. *Id.*

*Gilbert de Preston* (mentioned in § 23, p. 327) gradually advanced to a higher station until, in 1252, he stood at the head of one of the commissions.<sup>275</sup> His salary in 1255, was forty marks *per annum*.<sup>276</sup>

28. In 1252 'writ for enforcing watch and ward, and the assize of arms;' demand of revenue for a crusade; and opposition to it; Charter of Feb. 11, 1251-2. What was granted in 1253 to the king when he confirmed the charters. Grant, in 1253, of the custody of an old castle erected by the Normans on the site of a Roman station. Names of justices appointed from 1253 to 1258.

"Two very ancient methods of ensuring peace and defence" were brought together in a "writ for enforcing watch and ward, and the assize of arms,"<sup>277</sup> issued the 20th of May, 1252, being the year in which the pope authorized Henry to exact for his expenses in crusade, a tenth of the revenues of the clergy of England for three years.<sup>278</sup>

"On the 13th of October (1252), the demand was laid before the assembled clergy, and was indignantly opposed by Grosseteste, who declared it to be an unprecedented and intolerable usurpation. Ethelmar, on his brother's part, argued that the French clergy had submitted, and that the English had no means of successful resistance. Grosseteste replied that the submission of the French was itself a reason for the resistance of the English; two such submissions would create a custom. After a long discussion, in which they attempted to prevail on Henry to make an independent remonstrance, they resolved that in the absence of the archbishops they were not competent to decide. The barons, whom the king next consulted on making an expedition to Gascony, replied that their answer would depend on that of the clergy."<sup>279</sup>

<sup>275</sup> And retained the same position, with one or two slight exceptions, till 1257. *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> 3 Lingard's Engl., ch. 2, pp. 174, 175; Select Charters, p. 362 to 364. On the 18th of July, 1253, there was a "writ for carrying out the watch and ward, and assize of arms." Select Charters, pp. 365, 366.

<sup>278</sup> 2 Stubbs's Const. Hist., ch. 14, p. 66. "Henry had probably as little intention of visiting Palestine as his father

and grandfather had had; if he had ever intended it, the resolution was no stronger than the rest of his purposes. Now the pope," by way of inducement, authorized this exaction. *Id.*, p. 66.

<sup>279</sup> *Id.*, pp. 66-7. Disgusted with finding that Ethelmar was inclined to side with the bishops, Henry now resorted to the meaner expedients of extortion, especially from the Londoners: a policy which afterwards cost him dear. *Id.*, p. 67.

"*Magna Carta Regis Henrici III, xi die Februarii, A. R. XXXVI. A. D. MDCCLI-II*," is in 1 Statutes of the Realm, p. 26 to 31, of edi. 1810. It appears to have been in February of that regnal year, which began in October, 1251; but it is not particularly mentioned by Mr. Stubbs.<sup>280</sup> Next, after what has been quoted from pages 66 and 67 of his second volume, comes the following:

"After a preliminary discussion at Winchester, at Christmas, the debate was continued the next Easter, 1253, and then, in a very large assembly of barons and clergy, the king obtained his wish; the three years' tenth was to be paid when the crusade should start; a scutage of three marks was granted by the tenants-in-chief, and in return Henry confirmed the charters. On this occasion it was done with peculiar solemnity: a solemn sentence of excommunication was passed on all impugners."<sup>281</sup>

In this year (1253) was given to *Stephen Longspee* custody of the castle erected soon after the Norman conquest, which had been seized by William, king of Scotland, in 1174.<sup>282</sup>

A grant in this year (1253), addressed '*Henrico de Bathon et sociis suis, justiciariis assignatis ad tenendum placita coram rege*,' is regarded as proving that he had been restored to his former high position.<sup>283</sup>

<sup>280</sup> It is not in his volume of Select Charters; nor is it in Taylor's Book of Rights.

<sup>281</sup> 2 Stubbs's Const. Hist., ch. 14, p. 67. "*Anno 37 Henrici III, A. D. 1253, sententia excommunicationis lata in transgressores cartarum*. The sentence or curse given by the bishops against the breakers of the charters." 1 Statutes of the Realm, pp. 6, 7; Taylor's Book of Rights, pp. 45, 46; Stubbs's Select Charters, pp. 364, 365. Both Taylor and Stubbs have the date the third of the ides of May; but in Taylor's volume the year is 1254, whereas in Stubbs's it is 1253. It was in August, 1253, that the king went to Gascony, leaving the kingdom in care of the queen and earl Richard as regents. 2 Stubbs's Const. Hist., ch. 14, p. 67.

<sup>282</sup> Clôse to the village of Burgh-on-The-Sands, on the northern side, on the

site of the old castle, stood the Roman station, Axelodunum, the sixteenth in the line of Severus's wall, and the spot where Adrian's vallum terminated; in and near the vicinity, urns, altars and inscribed stones have been discovered. Some of the ruins of the old castle were visible in Leland's time. 1 Dugdale's Engl. and Wales, p. 310.

<sup>283</sup> Foss's Biogr. Jurid. At a later period there is an entry referring to a proceeding in 41 H. III: '*Coram H. Bathon. et sociis suis, justiciariis regis de banco*.' In the preceding year he and his companions are mentioned without any designation to distinguish the court, the words used being '*et sociis suis, justiciariis regis*.' "These changes" (Mr. Foss observes) "suggest the caution with which such appellations should be used in support of an hypothesis." Biogr. Jurid.

*Robert de Shottindon* (or Sotington, or Sadington)<sup>284</sup> was raised to the bench about the beginning of 39 Hen. III (1254).<sup>285</sup>

*Nicholas de Hadlow*<sup>286</sup> (or Handlo), was raised to the bench about Nov., 1254.<sup>287</sup>

Before *John de Caletto* (or De Caux), abbot of Peterborough,<sup>288</sup> a fine was acknowledged in 1254 (39 Hen. III); in that and the following year he was at the head of the justices itinerant in several counties.<sup>289</sup>

*William de Cobbeham*, third son of Henry de Cobbeham (mentioned in § 6, p. 285), and brother of John de Cobbeham (mentioned in § 23, p. 327), and of Reginald de Cobbeham (mentioned in § 25, p. 332), was, in 39, 40 and 41 Hen. III, employed as a justice itinerant in various counties.<sup>290</sup>

*William de Englefield*<sup>291</sup> was one of the justices itinerant who visited several counties in 1255 and the next two years.<sup>292</sup>

*Geoffrey de Lukenore* was a justice itinerant in 39 Hen. III (1255).<sup>293</sup>

*Nicholas de Romsey* performed the functions of justice itinerant

<sup>284</sup> Called by Matthew Paris '*domini regis clericus specialis*.' He may have been the ancestor of Thomas de Sodington, the justice itinerant under Edward I, and Robert de Sodington, chief baron and Lord Chancellor under Edw. III. *Id.*

<sup>285</sup> His name appears upon fines till 1257. He died then at Hertford, on his circuit, and was buried there in the priory. *Id.*

<sup>286</sup> Of the manor of Court-at-Street, in Kent. *Id.*

<sup>287</sup> He continued to act up to Sept., 1266. *Id.*

<sup>288</sup> He was elected to that dignity in 1249, being then prior of St. Swithin's, at Winchester. Foss's Biogr. Jurid.

<sup>289</sup> From April till August, 1258, also payments were made for assizes to be held before him. *Id.*

<sup>290</sup> *Id.*

<sup>291</sup> Sheriff of Devonshire in 36 Hen. III (1251) and the next two years. He derived his name from the town of Englefield, in Berkshire, where, it is said, his family had property above 200 years before the Conquest. *Id.*

<sup>292</sup> And again in 1260; about which time it seems probable that he was made a justicier at Westminster. From 46 to 50 Hen. III, he was employed in a judicial character. *Id.*

<sup>293</sup> For Oxfordshire and other counties, perhaps only for pleas of the forest; he is next mentioned in the 45th and two following years as a justice itinerant into various counties. It would seem that he was also a regular justicier in this reign, inasmuch as from March, 1265, till Sept., 1271, there are numerous entries on the Rotulus de Finibus (Except. ii. 422-549) of payments for assizes to be held before him. *Id.*

several times in 39 and 40 Hen. III (1255-6).<sup>294</sup>

*John de Cokefield*<sup>295</sup> is first recorded on a fine levied at Michaelmas, 1256 (40 Hen. III).<sup>296</sup>

*John de Cave* acted as a justicier from 1254 to 1261.<sup>297</sup>

*Giles de Argentine*,<sup>298</sup> in 1253, was at the head of the justices itinerant for Berkshire, Oxfordshire and other counties; and was present as judge at Alton, in Hampshire, when William de Insula took John le Falconer by the throat in open court.<sup>299</sup>

*John de Wyville*<sup>300</sup> was constituted a justice (of the Common Pleas, according to Dugdale), Feb. 1, 1256.<sup>301</sup>

On the 13th of April, 1257, *Robert de Briwes* was ordered to be associated with *Simon de Wauton* 'et sociis suis justiciariis de Banco.' From this it is conjectured that *Simon de Wauton* (mentioned in

<sup>294</sup> Probably on both occasions, but certainly on the last, taking pleas of the forest only; also in 46 and 53 Hen. III. *Id.*

<sup>295</sup> So called from a place of that name in Suffolk. *Id.*

<sup>296</sup> He is on others till the following Michaelmas. In this latter year he was added to the justices itinerant in Suffolk county; after which there are payments for assizes to be taken before him, commencing in August, 1258, and ending in June, 1259. Payments for assizes before him are frequent from May, 1270, till May, 1272. During this period he had (according to Dugdale) a grant of £40 a year for his support as a justice of the King's Bench. He died in 56 Hen. III. *Id.*

<sup>297</sup> Foss's Biogr. Jurid.

<sup>298</sup> Grandson of Reginald de Argentine, and son of Richard, who was one of the justiciers in Normandy under King John, and steward of the household under Henry III. He was a knight of great valour, and had been actively engaged in the wars with the Welsh, by whom he was taken prisoner in 16 Hen. III. Afterwards he was

governor of Windsor castle. *Id.*

<sup>299</sup> *Id.*; citing Abbrev. Plac. 132.

<sup>300</sup> Observing that he "is placed by Dugdale among the barons of the Exchequer in 37 Hen. III (1253)," Mr. Foss remarks that "he perhaps sat there as one of the justices of the Jews, in which character he is named by Madox (ii, 318) among the barons two years previously." Foss's Biogr. Jurid.

<sup>301</sup> Afterwards, till Feb., 1263, he was present at the acknowledgment of fines. In an undated letter he begs the king to excuse him from the office of justice of Oyer and Terminer on account of his bodily infirmity and poverty; but he acted on the iters in 40, 44, and 47 Hen. III. In 1263 there are pleas before *Gilbert de Preston* and *John de Wyvill* at Westminster; his death is fixed about the latter year. His property was in Hampshire. If the baronetcy of Wyville, in Yorkshire (extinct in 1774) was derived from his lineage, the family that survives at Burton Constable traces descent from Humphrey de Wyvill of Slingsby castle, who came over with the Conqueror. *Id.*



§ 25, p. 332) was then at the head of the court.<sup>302</sup>

*Robert de Brus* (mentioned in § 27 p. 334) acted as a justicier from 1257 to 1263.<sup>303</sup>

*Peter de Percy* was a regular justicier from 41 to 47 Hen. III 1257-1263).<sup>304</sup>

Before *Henry de Tracy*<sup>305</sup> an assize was directed to be taken in Devonshire in 41 Hen. III.<sup>306</sup>

29. *Treasurer of the Exchequer in 1257, 1258 and afterwards; names of other barons of the Exchequer in 1257 and 1258.*

*Peter de Rivallis* (mentioned in § 17, p. 312), who had been keeper of the wardrobe, and was, on the 16th July, 1255, constituted a baron of the Exchequer, retaining his place at the wardrobe, was (it is said) appointed about Mich., 1257, treasurer of the chamber, on the death of Hurtaldus, but probably soon after died, as the last notice of him is in a grant to him in May, 1258, of land in Winchester.<sup>307</sup>

*Thomas de Wymundham* was ordered to be paid 30 shillings for writing 30 pair of statutes, '*triginta paria statutorum*,' to be sent to all the justices in eyre, and sheriffs throughout the realm; and also four shillings and sixpence for the parchment on which they were written (4 Rep. Pub. Rec. App., ii, 152). In 42 Hen. III, he is mentioned by Madox as a baron of the Exchequer, and by Dugdale as treasurer of the Exchequer.<sup>308</sup>

Madox's list of barons of the Exchequer embraces those below.<sup>309</sup>

<sup>302</sup> In August following he was confirmed bishop of Norwich, after which he does not appear to have acted on the legal bench. He presided over that see till his death, Jan. 2, 1265. *Id.*

<sup>303</sup> On the circuits of the two last years he was at the head of the commission. He was on the king's side in the contest of 1263, and was taken prisoner with him at the battle of Lewes, May 14, 1264. *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> He, on the death of his father, Oliver de Tracey, in 12 John, succeeded

to the barony of Barnstaple, in Devonshire, including Tavistock and other manors. In 17 Hen. III (1232) he was placed at the head of the justices itinerant in Cornwall (Mr. Foss says), "no doubt as a resident nobleman only." *Id.*

<sup>306</sup> In the same year he was also governor of Exeter castle. *Id.*

<sup>307</sup> Foss's Biogr. Jurid.

<sup>308</sup> *Id.*

<sup>309</sup> In 35 and 42 Hen. III, *Richard de Crokesley*, who became abbot of Westminster March 25, 1247, and was, be-

30. *Custody of the Great Seal after Chancellor Neville's death (1244); respective parts of Silvester de Everdon, John Mansel, John de Lexinton, Peter de Rivallis, William de Kilkenny and Peter Chaceporc (or Chaceport). In 1253 taunting speech of the king to Silvester de Everdon. Patent of July 2, to Queen Eleanor and Richard, earl of Cornwall, as regents during the king's absence. Observations upon Lord Campbell's chapter, entitled 'Life of Queen Eleanor, Lady Keeper of the Great Seal.' Upon the king's return to England in Jan., 1255, the Seal was delivered into custody of Henry de Wingham. Of John Mansel and Bishop Kilkenny in 1256.*

Of *Silvester de Everdon* (mentioned in § 22, p. 325), it is stated that he was appointed (Nov. 14, 1244) either chancellor or keeper, and was "one most cunning in the custom of the chancery;" that in 1246 he received, in August, the bishopric of Carlisle, and in November was succeeded in the chancery by *John Mansel* (mentioned in § 18, p. 315).

*John Mansel* had the custody of the Great Seal from Nov. 8, 1246, to Aug. 28, 1247, when the king sent him on an embassy; after his return, he received back the custody of the seal Aug. 10, 1248, and held it till September 8, 1249. "In none of these entries is he called chancellor." During this second possession of the Great Seal he

tween 35 and 42 Hen. III, the king's ambassador to the court of Rome (Rymer i, 344); and on two other occasions on missions to the duke of Brabant, to negotiate a marriage between Prince Edward and the duke's daughter. Matthew Paris describes him as a learned and elegant man, with a handsome person and a pleasing voice. He died about July 21, 1258. Foss's Biogr. Jurid.

In 1257-8, *Eleivius*, a monk in Cogges (in Oxfordshire), of which he became prior in 1227; whence he was promoted, March 19, 1251 (35 Hen. III) to the abbacy of the monastery of Pershore, in Worcestershire. He was

in August, of that year, appointed the king's escheator on the south side of Trent, and continued in that office till 1255, in which year he was employed by the king on a financial commission into Wales. He retired from the abbacy of Pershore Octo. 24, 1262, having previously granted to it his manor 'de Haukesburi.' *Id.*

In 42 Hen. III (1258) *John de Launfare*. *Id.*

In the same year *John Reinger* (or Renger). He, and his brother Matthew were, in 6 Hen. III, when his father was sheriff of London, delivered as pledges for the peace of that city. He died in 53 Hen. III. *Id.*

obtained the valuable appointment of provost of Beverley; this is mentioned as "the highest clerical dignity he ever enjoyed."<sup>310</sup>

*John de Lexington*<sup>311</sup> was an officer connected with the court, and was probably one of the clerks of the chancery; the Great Seal having been several times placed in his hands apparently in that character.<sup>312</sup>

*Peter de Rivallis* being keeper of the wardrobe, it was probably in this character<sup>313</sup> that the Great Seal was committed to him in conjunction with *William de Kilkenny*,<sup>314</sup> in 1249, while *John de Lexington* was absent; "the wardrobe being a usual place of depositing the seal when the chancellorship was vacant."

*William de Kilkenny* was afterwards in sole possession of the seal. On his becoming ill, May 15, 1253, it was delivered to *Peter Chaceport*<sup>315</sup> and *John de Lexington*. That illness ceased before July 2, 1253.

"When the bishops and nobles in 1253 went to the king with the conditions upon which they granted the aid he demanded, and the former were sharply reminded that their elevation was effected by the very causes of which they complained," it is related (by Matthew Paris) that to *Silvester de Everdon* he addressed himself thus: 'And thou, Silvester of Carlisle, who, so long licking the chancery, wast the little clerk of my clerks, it is well known to all here I advanced

<sup>310</sup> Foss's Biogr. Jurid.

<sup>311</sup> Eldest son of Richard de Lexington, a baron so called from a manor of that name near Tuxford, in Notts; Baronage i, 743; cited in Foss's Biogr. Jurid.

<sup>312</sup> Within the years 1238, 1242, 1249 and 1253, he went to Rome on the king's business, and performed other duties in connection with the court. In 1241 he had the custody of Griffin, Prince of Wales, in the Tower of London (Rapin iii, 71); in 1247 he is spoken of as the king's seneschal. (Cal. Rot. Pat. 22.) Though elevated in June, 1248, to the judicial bench, he may afterwards, on a particular emergency, have been occasionally called to take possession of the Great Seal. Foss's Biogr. Jurid.

<sup>313</sup> There is nothing to show that he

was concerned in the chancery. In Feb., 1249, he was one of the king's council sent to receive the tallage of the city of London. Foss's Biogr. Jurid.

<sup>314</sup> Archdeacon of Coventry in 1248. He held some official position in the court from 1249 (33 Hen. III) to 1252. As both *Peter de Rivallis* and *William de Kilkenny* were connected with the king's wardrobe, Mr. Foss thinks it is not improbable that the Great Seal "was merely deposited there, under their safe custody, during John de Lexington's absence." *Id.*

<sup>315</sup> He received in that year the archdeaconry of Wells, and in the next year the treasurership of Lincoln; after which there is no mention of him, except that he is one of the executors named in King Henry's will. He is sometimes called Chaceport. *Id.*

thee to be a bishop before many reverend persons and able divines.' <sup>316</sup>

William Kilkenny's signature is to a patent of July 2, 1253 for the government of the kingdom by Queen Eleanor and Richard, earl of Cornwall, as regents, during the King's absence in Gascony. <sup>317</sup> Not only are the powers thereby conferred the subject of observations; <sup>318</sup> but Lord Campbell has a chapter entitled "Life of Queen Eleanor, Lady Keeper of the Great Seal," <sup>319</sup> wherein he publishes the patent subjoined. <sup>320</sup>

However great may have been Lord Campbell's desire to produce an entertaining chapter, it did not induce him to include in his list of 'Chancellors and Keepers of the Great Seal,' the king's brother, Richard, earl of Cornwall, or any of the council. If Mr. Foss had any desire to entertain, it seems to have been subordinate to his wish to be accurate. After mentioning the patent of July 2, 1253, to the regents, he says:

"They, at the same time, were directed to deliver to William de Kilkenny the seal of the Exchequer, to be kept by him in the place of the *Great Seal*, which the king had ordered to be locked up till his return. About Michaelmas, 1254, the monks of Ely elected him" (Kilkenny) "their bishop; and on the 5th of the ensuing January, the king having returned to England on the 1st, the bishop elect delivered up the Great Seal to him and received a patent, 39 Hen. III, m. 15, expressive of his diligent and acceptable service, with an entire quittance from all reckonings and demands in respect of the king's court or otherwise, '*de tempore quo fuit custos sigilli nostri in Anglia.*'" <sup>321</sup>

<sup>316</sup> Foss's Biogr. Jurid. *Silvester de Everdon* was killed by a fall from his horse May 13, 1254. *Id.*

<sup>317</sup> Foss's Biogr. Jurid.

<sup>318</sup> By Miss Strickland, in 2 *Queens of England*, p. 63 to 66, of Phil. edi. 1857, and by Lord Campbell in 1 *Lives of the Chancellors*, p. 138, of 2d edi. (1846), *note*; and p. 134, of Boston edi. 1874.

<sup>319</sup> *Id.*, ch. 8.

<sup>320</sup> "De Magno Sigillo Commissio. Rex omnibus, &c., salutem. Noveit univer-

sitas vestra quod nos in Vasconiam proficiscentes dimisimus Magnum Sigillum nostrum in custodia dilecte Regine nostre sub sigillo nostro privato et sigillis dilecti fratris et fidelis nostri Ricardi Comitis Cornubiæ et quorundam aliorum de consilio nostro; tali conditione adjecta quod si aliquid signatum foret nomine nostro dum extra regnum Angliæ fuerimus, alio sigillo quam illo, quod vergere poterit in coronæ nostre vel regni nostri nostri detrimentum vel diminutionem, nullius sit momenti et viribus careat omnino."

<sup>321</sup> Biogr. Jurid., tit. Kilkenny.

Duties other than 'judicial' must have been contemplated by the king when he gave the commission of July 2, 1253; for the queen was "left by her husband in a state of pregnancy; and on the 25th of November, 1253, she was delivered of a princess."<sup>322</sup> In 1254, Prince Edward was to be married.<sup>323</sup> With him the queen, on the 5th of May, sailed from Portsmouth for Bordeaux, and travelled thence across the Pyrenes to Burges, where they arrived August 5, 1254. King Henry waited at Bordeaux to receive his son's bride; and the royal family returned to England in January, 1255.<sup>324</sup>

That *Henry de Wingham*<sup>325</sup> was, on the 2d July, 1253, connected with the chancery, is thought probable from the signature then, '*per manus H. de Wingham*.'<sup>326</sup> On the 5th of January, 1255, the Great Seal was delivered into his custody.<sup>327</sup>

*John Mansel*, if not now 'licking the chancery,' seems to have been 'licking' something; though the extent of his income from benefices may be exaggerated.<sup>328</sup>

<sup>322</sup> 1 Campbell's *Lives of the Chancellors*, ch. 8, p. 141, of 2d edi. (1846), p. 137, of Boston edi. 1874.

<sup>323</sup> Mr. Foss says of *John Mansel*, "In 1253 he accompanied William Bitton, bishop of Bath and Wells, on a special mission to Spain to negotiate a marriage between Eleanor, the sister of Alphonso, king of Castile," and "Prince Edward, King Henry's eldest son; and the charter which they brought back is still preserved with its golden seal among the archives at Westminster. In his commission for this embassy he is called '*secretarius noster*,' being the first occasion on which that title is used." Biogr. Jurid.

<sup>324</sup> 1 Campbell's *Lives of the Chancellors*, ch. 8, pp. 142, 143, of 2d edi. (1846), pp. 138, 139, of Boston edi. 1874; Miss Strickland's *Queens of England*, vol. 2, p. 88 to 90, of Phila. edi. 1857.

<sup>325</sup> Born at Wingham, in Kent, and probably brought up in one of the

offices of the Exchequer. He was in 30 Hen. III (1245) in conjunction with *John de Grey*, the justice of Chester, assigned to assess the tallage for that city. He was then one of the king's escheators; and besides being appointed chamberlain of Gascony was employed in two embassies into France. Foss's Biogr. Jurid.

<sup>326</sup> To the patent dated July 2, 1253. (37 Hen. III), '*de provisione facta ad gubernationem regni*' when the king left the government in the hands of regents. *Id.*

<sup>327</sup> But the title of chancellor does not appear to have accompanied it. In 1257 he was collated to the chancellorship of Exeter, and soon afterwards was advanced to the valuable deanery of St. Martin's. *Id.*

<sup>328</sup> "Some assert that the number amounted to 700, producing 18,000 marks *per annum*, while others limit the number to 300, and the annual produce to 4,000 marks." *Id.*

"The munificence of his expenditure may be judged from the stately dinner he gave in 1256 at his house in Tothill Fields, when he entertained the Kings and Queens of England and Scotland, Prince Edward and the nobles and prelates of the kingdom. It is recorded that his guests were so numerous that he was compelled to erect tents for their reception, and that 700 dishes were scarcely sufficient for the first course."<sup>329</sup>

Different parties praise Bishop Kilkeny.<sup>330</sup> He died September 22, 1256, while on an embassy to Spain.<sup>331</sup>

31. *Summons to parliament in 1254; charter to Oxford in 1255; quarrels in parliament and council in 1255 and 1256; return of Simon de Montfort. In 1258 parliament at London in April; canons by Archbishop Boniface June 6.*

What is spoken of in 3 Lingard's Engl. ch. 2, pp. 165, 166, seems to be the same "writ of summons for two knights of the shire to grant an aid" that is published by Mr. Stubbs as dated *xi die Februarii*, 1254. It is mentioned by him in one volume as "an important land-mark in the parliamentary history of England,"<sup>332</sup> and in another as "the first distinct case since the reign of John, of the summons of knights of the shire to parliament."<sup>333</sup>

The regents "summoned a great council to Westminster on the 26th of April at which four chosen knights from each county and representatives of the clergy of each diocese were directed to report the amount of aid which their constituents were prepared to grant."<sup>334</sup>

"The history of the year 1255 is a continuous record of quarrels in parliament and council. The charters were confirmed and republished in vain."—"For the first time on record the magnates on the 13th of October to which the" parliament (called the Hoketide par-

<sup>329</sup> *Id.*

<sup>330</sup> "He is represented as handsome in his person, modest in his demeanour; skilled in the municipal laws of the kingdom; wise, prudent and eloquent;" and among the benefactors of Cambridge. *Id.*

<sup>331</sup> His body was buried at Sugho, where he died, but his heart was brought to his own cathedral. *Id.*

<sup>332</sup> Select Charters, pp. 367, 368.

<sup>333</sup> Const. Hist., ch. 14, p. 57.

<sup>334</sup> *Id.*, 68. The charter granted at 'Wodestok' to Oxford the 18th of July, 1255, is mentioned by Mr. Stubbs as showing "the increased minuteness" of detail that was now being introduced into municipal institutions." Select Charters, pp. 368, 369.

liament)<sup>335</sup> "had been adjourned, refused to give an aid on the distinct ground that they had not been summoned in the form prescribed by the great charter. The year 1256 was full of the same contests."

Henry's brother Richard was in 1256 chosen, and in 1257 crowned, 'king of the Romans.'<sup>336</sup>

"Circumstances had prepared a leader" in *Simon de Montfort*, who had now returned home.

"The parliament of 1258 met at London on the 9th of April, and sat until the 5th of May."—"The meeting was a stormy one. The king's petition for money was rejected."

"In the end Henry placed himself in the hands of the barons. A committee of twenty-four, chosen half from the royal council and half by the barons, were to enforce all necessary reforms before the following Christmas; on this understanding the question of a money grant might be considered. The king's consent to this scheme was published on the 2d of May; and the parliament was the next week adjourned to the 11th of June, at Oxford."<sup>337</sup>

In 42 Hen. III (1258) Boniface<sup>338</sup> made divers and many canons<sup>339</sup> and constitutions provincial, directly against the laws of this realm." So *Ld. Coke* so says;<sup>340</sup> and he observes, "this was the principal ground of the controversies between the judges of the realm and the bishops; for this caused ecclesiastical judges to usurp and encroach upon the common law. But notwithstanding the greatness of the archbishop Boniface, and that divers of the judges of the realm were of the clergy, and all the great officers of the realm, as chancellor, treasurer, privy seal, &c., were prelates; yet the judges proceeded according to the laws of the realm, and still kept, though with great

<sup>335</sup> At this parliament of 1255, the demand for an elective ministry was made and refused as usual. 2 Stubbs's Const. Hist., ch. 14, p. 68.

<sup>336</sup> 3 Lingard's Engl., ch. 3, p. 120.

<sup>337</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 71 to 74. For the day in leap year, a provision of the king dated May 9, in 40 Hen. III (1256), is in 'The Statutes Revised,' vol. 1, pp. 4, 5, of ed. 1870. The king's consent to a project of reform, and his consent to the election of the twenty-four, are in Select Charters, p. 371 to 373.

<sup>338</sup> "Younger son of Thomas, earl of Savoy, archbishop of Canterbury, uncle

of Eleanor, queen of England, who was daughter of Raymond, earl of Provence, by Beatrix, daughter of Thomas, earl of Savoy, and sister to the said Boniface." 2 Inst., 599.

<sup>339</sup> Which canons began thus: '*Universis Christi fidelibus ad quos præsens pagina pervenerit, Bonifacius, miseratione divina Cantuariensis archiepiscopus, totius Angliæ primas et sui suffraganei in verbo salutari salutem*'; and ending thus: '*Actum apud Westm. Sexto iduum Junii anno domini 1258. In quorum omnium,*' &c. *Id.* (2 Inst. 599.)

<sup>340</sup> *Id.*, 599.

difficulty, the ecclesiastical courts within their just and proper limits.”<sup>341</sup>

32. *Curious ways of obtaining money for the king continued till the parliament at Oxford in June 1258. Grievances complained of. Arrangement for a new provisional government: a commission of twenty-four; and other measures. Hugh Bigot becomes chief justiciary. Henry de Wingham continues in custody of the Great Seal.*

Such ways of obtaining money for the king as are mentioned in chapter 14, § 2, pp. 265, 266, had *not* entirely ceased before 1258.<sup>342</sup>

“On the 11th of June, at Oxford, the mad Parliament as it was called by Henry’s partisans, assembled. Fearful of treachery from the foreigners, the barons had availed themselves of the summons to the Welsh war and appeared in full military array.<sup>343</sup> The list of grievances the petition of the barons now presented,<sup>344</sup> contained a long series of articles touching the points in which the king’s officers

<sup>341</sup> *Id.*, 599.

<sup>342</sup> *William Fitzwarine’s* wife, Gila (mentioned in ch. 14, § 2), died while he was sheriff of Lincolnshire; and he was again indebted to royalty for a wife, paying, in 2 Hen. III, a fine of 50 marks for permission to marry Agnes, one of the sisters and coheirs of John de Wauhull, and widow of Robert de Bas-singham.

In 4 Hen. III, *Ralph Musard*, a widower, having married Isabella, the widow of John de Neville, without the king’s license, procured a pardon by a fine of one hundred marks.

In 18 Hen. III, the widow of *Henry de Braybroc*, “paid a fine for permission to marry whom she pleased.”

In 19 Hen. III, *John de Kirkeby* paid 700 marks to the king for the wardship and marriage of the son and daughter of Philip, the brother of Thomas de Burgh.

In 26 Hen. III, *John Le Moyne* was fined 20 marks for marrying Isabella, one of the heirs of Eustacé de Fercles, without the king’s license.

In 35 Hen. III, *John de Grey* of-

fended the king by marrying without his license Joanna, the widow of Pauline Peyvie, who had been devoted to another person; and he was fined 500 marks for his transgression.

In 37 Hen. III, *Robert Walerand* paid a fine of 40 shillings of gold for the marriage of Beatrice, daughter of Robert de Brus.

In 42 Hen. III, *Thomas de Fisheburn* paid a fine of 100 shillings in Northumberland for marrying Beatrice, the widow of William, the coroner. Foss’s Biogr. Jurid.

<sup>343</sup> On the barons appearing in complete armour, the king asked, ‘Am I then your prisoner.’ ‘No, sir,’ replied *Roger Bigot*, earl of Norfolk, ‘but by your partiality to foreigners, and your own prodigality, the realm is involved in misery. Wherefore we demand that the powers of government be delegated to a committee of barons and prelates, who may correct abuses and enact salutary laws.’ Foss’s Biogr. Jurid.

<sup>344</sup> This petition is in Mr. Stubbs’s volume of Select Charters, p. 373 to 378.



had transgressed either the letter or the spirit of the charters. The committal of royal castles to native Englishmen, the bestowal of heiresses on native husbands, the honest fulfilment of the charter of the forests, the freedom of ecclesiastical elections, the right of the lords to the wardship of their tenants, are claimed as a matter of justice. The complaints touch especially the illegal exaction of feudal services, the illegal bestowal of estates as royal escheats and the denial of justice to their lawful owners, the vexatious fines for non-attendance exacted by the itinerant justices and by the sheriffs who had multiplied the number of local courts beyond endurance, the erection of castles on the coast without national consent, the abuse of purveyance, the dealings with the Jews and other usurers who impoverished the kingdom and played dishonestly into the hands of the great, the delays of justice owing to the licenses issued by the king to the knights exempting them from service on juries, assizes and recognitions, and other like points which require a minute collation with the articles of the Great Charter to illustrate their full meaning. The justice of the petitions was beyond question, but the immediate conclusion to be drawn from them was the necessity of having a fully qualified justiciar; and this at once opened the question of the new provisional government, the creation of the committee of twenty-four, by whose action the articles of complaint were to be redressed, and by whom the ministry, the justiciar, chancellor, treasurer and council were to be named. Preparations had probably been made for this in the earlier parliament; these were now completed. The idea of a commission of twenty-four was probably derived from the executive body appointed at Runnymede; the mode of appointment bore more distinct marks of the character of an arbitration. The two parties were definitely arrayed against each other, for Henry was not in the forlorn state to which his father had been reduced. The king nominated his nephew, Henry of Cornwall, his brother-in-law, John of Warenne,<sup>345</sup> his three half-brothers, Ethelmar, Guy and William of Lusignan, the earl of Warwick,<sup>346</sup> John Man-

<sup>345</sup> *John de Warenne* (or Plantagenet), earl Warren, and earl of Surrey, was grandson of the third earl William, and son of that earl William, who married Maud, sister of Anselm Mareschall, earl of Pembroke, and widow of Hugh Bigot, earl of Norfolk. John was a minor at the time of his father's death, in 1240, but attained his full age before 1248, when he sat with the rest of the earls in the parliament held in London. He married Alice, daughter of Hugh, earl of March, by Isabel, widow of King John, and half sister to Henry III. Foss's Biogr. Jurid.

<sup>346</sup> *John de Plessetis*, a Norman by

birth, who was constable of the Tower of London in 28 Hen. III, was, in 1243, married to Margery, sister and heir of the earl of Warwick, and widow of John Mareschall, and assumed the title of earl of Warwick, after obtaining the consent of *William Malduit* (the presumptive heir to the earldom in the event of the countess's death), that he should enjoy it for his life if he survived her. He was one of the justices assigned in 35 Hen. III (1251) to hold the pleas of the city of London; and in his latter years was entrusted with the sheriffalty of Warwick and Leicester. He died Feb. 26, 1263. *Id.*

sel,<sup>347</sup> John Darlington, a friar, who was afterwards archbishop of Dublin, the abbot of Westminster, *Henry Wingham*, keeper of the seal,<sup>348</sup> the bishop of London, and probably archbishop Boniface. The community of the barons elected the earls of Gloucester, Leicester, *Hereford*<sup>349</sup> and *Norfolk*;<sup>350</sup> Roger Mortimer, John Fitz Geoffrey, *Hugh Bigot*,<sup>351</sup> Richard de Gray, William Bardulf, Peter de Montfort, *Hugh le Despencer*,<sup>352</sup> and the bishop of Worcester, *Walter Cantilupe*.<sup>353</sup> The king's party was very poor in the historic names of England; and the baronial selection included most of those which come into prominence both before and after this crisis. This body, after having received promises of faithful co-operation and obedience from the king and his son, proceeded to draw up a provisional constitution.

"The king was to be assisted by a standing council of fifteen members; these were to have power to counsel the king in good faith concerning the government of the realm and all other things that appertained to the king and the kingdom, to amend and redress all things which they saw needed amendment and redress, and to exercise supervision over the great justiciar and all others. They were, in fact, not only to act as the king's private council, but to have a constraining power over all his public acts, just as in the scheme propounded in 1244, the four chosen counsellors were to have done, and

<sup>347</sup> As to him see § 30, p. 342.

<sup>348</sup> Mentioned in § 30, p. 345.

<sup>349</sup> *Humphrey de Bohun*, besides succeeding to the earldom of Hereford, was on the death of William de Mandeville, his mother's brother, without issue, created, in 1237, earl of Essex. He was sheriff of Kent in 23 Hen. III, and the two following years; in 34 Hen. III, he went to the Holy Land; in 37 Hen. III, he was present in Westminster Hall, when the formal curse was pronounced, with bell, book and candle against the violators of Magna Charta. In 41 Hen. III, and for some years afterwards, he had the custody of the Marches of Wales. His life was one career of activity; at one time boldly demanding from the king a redress of grievances—at another, supporting his sovereign in resisting his enemies. *Id.*

<sup>350</sup> After the battle of Lewes (in 1264), *Roger Bigot*, earl of Norfolk, was appointed by the barons governor of the castle of Oxford. He died in 1270,

leaving no issue. *Id.*

<sup>351</sup> *Hugh Bigot*, younger brother of Roger, earl of Norfolk, was chief ranger of the forest of Farnedale in 39 Hen. III, and governor of the castle of Pickering in the next year; and he accompanied the king, in 41 Hen. III, in his expedition against the Welsh. *Id.*

<sup>352</sup> Descended from one who had been the steward of the king, and who was, in the language of the time, called Dispensator or le Despenser, which title became a surname. Hugh accompanied Richard, king of the Romans, to Germany in 1257. In 44 Hen. III he went as a justice itinerant into three counties. *Id.*

<sup>353</sup> *Walter de Cantilupe* (mentioned in § 14, p. 308) was, in August, 1236, elected to the bishopric of Worcester; and afterwards went to the Holy Land, accompanied by William Longspee, earl of Salisbury. He died at his manor of Blockley, Feb. 12, 1265. *Id.*

as was actually done by the council of nine, chosen after the battle of Lewes. To these fifteen, as the king's perpetual council, was assigned the function of meeting, in three annual parliaments, at Michaelmas, at Candlemas and on the 1st of June, with another body of twelve, chosen by the barons, to discuss common business on behalf of the whole community. In the selection of the fifteen, great precaution was to be taken. The twenty-four divided into their two original halves. The king's half selected two out of the opposite twelve, and the twelve appointed by the barons chose two out of the king's half; these four were to choose the fifteen. The twelve appointed to meet at the annual parliaments were chosen by the general body of the barons; another committee of twenty-four, chosen by the whole parliament on behalf of the community, was to treat of the aid which the king demanded for the war; and the reform of the church was committed to the original twenty-four to be enforced as they should find time and place."<sup>354</sup>

"The result was certainly a compromise; *Hugh Bigod*" (or Bigot), "a baron of the strictest integrity, and a member of the baronial party, was named justiciar at once;<sup>355</sup> the great seal remained in the hands of *Henry of Winham*;<sup>356</sup> and *Philip Lovell*, the king's treasurer, con-

<sup>354</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 76, 77; Select Charters, p. 378; Green's Hist. of Eng. Peop., book 3, ch. 3, pp. 291, 292 of vol. 1.

<sup>355</sup> 2 Stubbs's Const., ch. 14, pp. 77, 78. And at the same time the Tower of London was committed to his charge (Brady, App., 218), to which was afterwards added the command of Dover Castle and the chamberlainship of Sandwich (Cal. Rot. Pat. 31). Foss's Biogr. Jurid. "One of the first resolutions of the twenty-four was, that the king should at once resume all the royal castles and estates which had been alienated from the crown; and a list was made of nineteen barons, all of them Englishmen, to whom the castles should be entrusted; amongst these the justiciar appears as warden of the Tower of London. When, however, it was proposed that the resolution should be enforced, the king's half-brothers and their friends refused compliance. In vain Simon de Montfort, as Hubert de Burgh had done before him, formally gave up Odiham and Kenilworth; the alien party left the court in haste on the 22d of June, and

threw themselves into the bishop's castle at Winchester. There they were besieged, and after some ignominious negotiations, capitulated on the 5th of July. Immediately after the surrender, the Lusignans, with their followers, left the kingdom, carrying off only 6,000 marks out of the enormous treasures which they had accumulated. This struggle, however, did not interrupt the progress of reform; on the 26th of June, Henry directed the four elected lords to proceed to nominate the council. Edward, as soon as the aliens had departed, swore to observe the provisions; on the 23d of July they were accepted by the Londoners; on the 28th directions were issued for inquiry into abuses; on the 4th of August, Henry published his assent to abide by the decisions of his new council." 2 Stubbs's Const. Hist., ch. 14, pp. 78, 79.

<sup>356</sup> *Id.*, pp. 77, 78. He was continued in his office, on swearing not to put the seal to any writ which had not the approbation of the council as well as of the king. Soon after this, on the flight of the king's half-brother, Ethelmar, who

tinued in office until the following October, when he was removed by the barons and *John of Crakehall*, who had been steward to Grosse-teste, appointed in his place.<sup>357</sup>

33. *From June, 1258, until the spring of 1263, of the provincial government; the custody of the Great Seal; the treasurer; the chief justiciary; and some of the more important of the other justices. Particular persons now assigned 'ad tenendum bancum regis.' Position of Roger de Thurkilby, Henry de Bathonia, William de Wilton and Gilbert de Preston.*

"The provisional government lasted from June, 1258, to the end of 1259, without any break, and from that date, with several interruptions, until the spring of 1263, when war began. During this time the three annual parliaments were held, the council of fifteen meeting the twelve representatives of the community, and with them publishing ordinances and taking other measures for the good of the state."<sup>358</sup>

In 1259, *Hugh Bigot*, the chief justiciary, selected *Roger de Thurkilby* and *Gilbert de Preston* as his companions on a circuit from county to county, to administer justice throughout the kingdom.<sup>359</sup> Although no complaint was made against *Hugh Bigot*, and he seems to have been zealous and active in the execution of his official duties, yet in the latter part of 1260, he resigned,<sup>360</sup> and *Hugh le Despencer* (mentioned in § 32) was appointed by the barons to succeed him.<sup>361</sup>

On the 18th of October, 1260, *Henry de Wingham* retired from

had been elected bishop of Winchester, the monks of that church chose *Henry de Wingham* for their bishop. He declined this, and shortly afterwards accepted the bishopric of London, and was consecrated Feb. 15, 1260. Foss's Biogr. Jurid.

<sup>357</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 77, 78; Select Charters, p. 379, and p. 387 to 391.

<sup>358</sup> 2 Stubbs's Const. Hist., ch. 14, p. 79; Green's Hist. of Engl. Peop., book 3, ch. 3, pp. 292, 293, of vol. 1. The series of ordinances, known as the provisions of Westminster, and mentioned in 2 Stubbs's Const. Hist., ch. 14, p. 81,

are in 1 Statutes of the Realm 8-12, and Select Charters, p. 391 to 396. A writ of Sept. 11, 1261, "summoning three knights of the shire to parliament at Windsor," is in *Id.*, pp. 396, 397.

<sup>359</sup> Foss's Biogr. Jurid. During the king's absence abroad, from Nov., 1259, till April, 1260, *Hugh Bigot* attested all the mandates on the fine roll. *Id.*

<sup>360</sup> He was on the king's side May 12, 1264, in the battle of Lewes. After the battle of Evesham, in the following year, he was replaced in the government of the castle of Pickering. He died about Nov., 1266. *Id.*

<sup>361</sup> *Id.*

the chancery.<sup>362</sup> Whereupon the barons placed the Great Seal in the hands of *Nicholas de Ely*.<sup>363</sup>

Although the king seems to have been compelled by remonstrances (of some of his friends) to dismiss his counsellor, *John Mansel*, yet soon (in 1261, in the spring or summer) he openly resisted the controul under which the barons had placed him since the parliament at Oxford, in 1258; and appointed *Philip Basset*<sup>364</sup> chief justiciary (though the baron's chief justiciary was his son-in-law, *Hugh le Despencer*);<sup>365</sup> and transferred the Great Seal from *Nicholas de Ely*<sup>366</sup> to *Walter de Merton*.<sup>367</sup> The king's manifesto was

<sup>362</sup> The king's approval of his conduct was shown by the permission to retain his deaneries and all his other ecclesiastical preferments. He died July 13, 1262, and was buried in his own cathedral. *Id.*

<sup>363</sup> Appointed archdeacon of Ely about 1249 (33 Hen. III). *Id.*

<sup>364</sup> Third son of *Alan Basset* (mentioned in § 6, p. 283), after whose death he was, in 1233, on the side of Richard, earl of Pembroke, but was, from 1234, high in the king's favour. He was, in 1242, one of the commanders of knights sent to the king in Poitou; had a grant, in 1243, of the custody of the lands and heir of Matilda de Lucci, and, in 1252, of that of the lands and heir of Richard de Ripariis. He is called bailiff of the king of the Romans in an entry of 43 Hen. III. Besides attending Henry III, in his wars in France and in Wales, he was, in the 29th year of his reign, one of the ambassadors to the council of Lyons to complain of papal exactions; and, in 44 and 45 Hen. III, was constituted governor of the castles of Oxford, Bristol, Corff and Shireburn, with the sheriffalties of the counties in which they are situate. Foss's Biogr. Jurid.

<sup>365</sup> *Philip Basset's* first wife was Hawise or Helewise, daughter of John Gray of Eaton. By her he left an only

daughter, Alyna, or Aliva, who had first married Hugh le Despencer, the chief justiciary, but was then the wife of Roger Bigot, earl of Norfolk, the son of Hugh Bigot; she being thus connected with three chief justiciaries, as the daughter of one, the wife of a second, and the daughter-in-law of a third. In 1257 the manor of Dimmock was granted to Philip Basset, and his wife, Ela, countess of Warwick. She was daughter of William Longspee, earl of Salisbury and widow of Thomas, earl of Warwick. This second wife of Philip Basset survived him. *Id.*

<sup>366</sup> But by a separate patent specially recommended Nicholas for his good service. *Id.*

<sup>367</sup> Son of William de Merton, archdeacon of Beck's, and of Christina, daughter of Walter Fitz-Oliver, of Basingstoke. Walter was born at Merton, in Surrey, and educated in its convent; he became a clerk in chancery, and had some other place in the court. As usual with those officers, he received various ecclesiastical preferments, among which were prebends in St. Paul's, Exeter and Salisbury. The Great Seal was temporarily placed in his hands—no doubt as one of the clerks in chancery—May 7, 1258, and March 14, and July 6, 1259. Foss's Biogr. Jurid.

published Aug. 16, 1261.<sup>368</sup>

Both *Hugh le Despencer* and *Philip Basset* seem to have acted at the same time till the short accommodation between the contending parties, in April, 1261, when Philip Basset's appointment was fully established.<sup>369</sup> His name appears on the plea roll of the Exchequer as justiciary of England at the end of June, 1263.<sup>370</sup>

After July 5, 1261, there are several letters to *Walter de Merton*, as chancellor; one is from the king, thanking him and Philip Basset for their attention to his affairs.<sup>371</sup> In 1263, *Walter de Merton* ceased to be chancellor, on June 12, when (as may be seen in the next paragraph) his predecessor became his successor.

*John de Caletto* (or de Caux), mentioned in § 28, p. 339, was, in October, 44 Hen. III, constituted treasurer, and continued so till his death, March 1, 1262.<sup>372</sup> He was succeeded by *Nicholas de Ely*, to whom, on the 12th of July, 1263, the Great Seal was again entrusted, with the title of chancellor.<sup>373</sup>

In 1258, on Oct. 3, three were assigned '*ad tenendum bancum regis*' at Westminster until the king more fully regulated that bench. Of the three the first named was *Roger de Thurkilby*, the second was *Gilbert de Preston*, and the third was *Nicholas de Hadlow* (or Handlo). Mr. Foss says of *Roger de Thurkilby*:

"On December 29, 1258, he had a grant of one hundred marks as '*residens ad Bancum*'; but whether the bench alluded to was the *Bancum regis* to which he was appointed the previous year, or the Common Bench or Common Pleas seems doubtful. It is difficult to

<sup>368</sup> 2 Stubbs's Const. Hist., ch. 14, p. 84.

<sup>369</sup> Between July 15 and October 18, 1262, while the king was absent in France, all the mandates on the fine roll were signed by Philip Basset; he presided at a council, when the earl of Leicester, taking advantage of the king's absence, is said to have produced a brief from the pope confirming the provisions of Oxford and recalling the king's absolution (Rapin iii, 146). Foss's Biogr. Jurid.

<sup>370</sup> Madox i, 100, is cited in *Id.*

<sup>371</sup> 4 and 5 Rep. Pub. Rec. is cited

in *Id.* Speaking of *Robert Walerand* (mentioned in § 27, p. 335), Mr. Foss observes that "it probably arose from his attending the court as seneschal that, in 46 Hen. III (1262), the Great Seal was temporarily put into his and Imbert de Munster's hands during the chancellorship of Walter de Merton." *Id.*

<sup>372</sup> He was a relative of Queen Eleanor; and is described as a pious and wise man. *Id.*

<sup>373</sup> *Id.*

decide also what position he held in the court; but considering that the salary of *Henry de Bathonia* was £100, and his only 100 marks, it would seem that he occupied the second place. Nevertheless there are some royal letters and commissions among the public records, apparently addressed to him as the head, (5 Rep. Pub. Rec. App. ii, 63, 64,) and an anonymous writer in mentioning his sudden death in the following year, describes him as '*Justiciarii Angliæ gerens officium*' (Leland's Collect. i, 245). He is represented as being second to none in his knowledge of the laws, and with the higher credit of opposing, though vainly, the iniquitous introduction of the *non-obstante* clause in the royal writs.<sup>374</sup>

Roger de Thurkilby was survived by *Henry de Bothonia*; to whom there was in 1250 (as mentioned in § 27, p. 334), a grant of £100 a year for his support '*in officio justiciarii*,' and in 1253, (as mentioned in § 30,) a grant addressed '*Henrico de Bathon. et sociis suis, justiciariis assignatis ad tenendum placita coram rege.*' So late as 1260, *Henry de Bathonia* went the circuit through eight counties; though he died before the 22d of the following February.<sup>375</sup>

*William de Wilton*<sup>376</sup> had, Dec. 11, 1261, a grant of £100 *per annum* to support him '*in officio justiciaræ*;' being the allowance then made to those who held the chief place. It is thought he was then chief justice of the King's Bench.<sup>377</sup>

34. *Of the justices generally, from 1260 to 1263; the salary to four.*

*Nicholas de Turri*, named in § 27, p. 335, is mentioned as a justice itinerant in 44 Hen. III (1260).<sup>378</sup>

In the same year (1260), *John de Gray*<sup>379</sup> was one of the justices

<sup>374</sup> Foss's Biogr. Jurid.; citing Prynne on 4 Inst. 132; Rapin iii, 100. See also Hume's Engl., ch. 12, p. 19, of vol. 2, N. Y. edi. 1850.

<sup>375</sup> Foss's Biogr. Jurid.

<sup>376</sup> Mentioned in § 24. He and his wife, Roësa, had, in 1256, a charter for a market in Kent. In 1253, and the next two years, there are several entries of payments for writs of assize to be taken before him. Such payments are resumed in July, 1259; in the next two years he is among the justices itinerant; in the last of these years he is at the

head of three of the commissions. *Id.*

<sup>377</sup> Writs of assize, to be taken before him, were granted up to Nov., 1263 (48 Hen. III). At the battle of Lewes, May 14, 1264, he fought on the king's side, and was killed. *Id.*

<sup>378</sup> Foss's Biogr. Jurid.

<sup>379</sup> Second son of Henry, eldest brother of Walter de Grey, archbishop of York (mentioned in ch. 14, § 9, p. 275, and in this ch., § 24, p. 328, *note*.) He had his seat at Eaton, near Fenny Stratford; was, in 23 Hen. III, sheriff of Buckinghamshire and Bedfordshire; and was, in

itinerant sent into the counties of Somerset, Dorset and Devon, at the head of whom was *John de Warenne* (or Plantagenet), mentioned in § 32, p. 349. *John de Verdun*<sup>380</sup> was one of those sent into Shropshire, Staffordshire and neighbouring counties, at the head of whom was *Roger de Montealto*.<sup>381</sup>

*Henry de Tracy* (mentioned in § 28, p. 341) appears in 45 Hen. III, among the barons of the Exchequer.<sup>382</sup>

In the same year (1261) one of the justices itinerant for Herefordshire and five other counties, was *Gilbert Talebot* (Talbot).<sup>383</sup> *Martin de Littlebere*, before whom an assize had been held in Kent, in 1247, was in July, 1261, appointed a regular justicier.<sup>384</sup> *Adam de Grien-vill*<sup>385</sup> was in three years, 1261-3, a justice itinerant in several com-

30 Hen. III, constable of the castle of Gannoc, in North Wales, and also justice of Chester. Notwithstanding the transgression mentioned in § 33, he was in favour in 1253. He was steward of Gascony, custos of the castles of Northampton, Shrewsbury, Dover and Hereford, and sheriff of the latter county. When the differences between King Henry and his barons were submitted to the decision of Louis, king of France, he was one of the barons who undertook that Henry should abide by the decision; he adhered to his king during the war which followed. After the battle of Evesham, in 1265, he was sheriff of the counties of Nottingham and Derby; and died in the following year. By his first wife, Emma, daughter and heir of Geoffrey de Glanville, he had a daughter and an only son, of whose descendants two have been sitting in the House of Peers, as Earl Wilton and Earl De Grey and Ripon. Foss's Biogr. Jurid.

<sup>380</sup> One of the twelve appointed at the parliament of Oxford, in 1258, to treat for the whole community. He died Octo. 21, 1274. Foss's Biogr. Jurid.

<sup>381</sup> Son of Robert de Montealto, whose father built in Flintshire a castle called

then Montalt, but now Mould. In early life Roger distinguished himself in opposing aggressions of David, son of Llewellyn, Prince of Wales. He died before June 27, 1260. *Id.*

<sup>382</sup> He died about 2 Edw. I. (1273). *Id.*

<sup>383</sup> Son of Richard Talebot, lord of Linton, in Herefordshire, by his wife, Alina, daughter of Alan Basset of Wycomb, and widow of Diogo de Montacute. Gilbert was, in 44 Hen. III, governor of the castles of Grosmont, Skenfrith and Blanckminster, which, with that of Monmouth, he was ordered to fortify against disturbances of the Welsh. He married Guenthlian, daughter, and eventually heir of Rhese ap. Griffith, Prince of Wales. Foss's Biogr. Jurid.

<sup>384</sup> From 1261, assizes to be taken before him continue without interruption till Nov., 1272. \*He is mentioned as a judge of the King's Bench in 12 Edw. I. *Id.*

<sup>385</sup> Paid, in 35 Hen. III, a fine of 40 marks for a grant of the bailiwick of the forest of Sellwood, in Wiltshire. Afterwards he was appointed justice of the Jews; he is mentioned as such in 42 and 44 Hen. III.



missions.<sup>386</sup> *Roger de Sumeri*<sup>387</sup> was, in 45 Hen. III (1261), a justice itinerant for Cambridge and Huntingdon.<sup>388</sup>

*Alan de Zouche*<sup>389</sup> was, in 1261, justice of all the king's forests south of Trent; and in 47 Hen. III, a justice itinerant in the counties of Huntingdon, Buckingham and Northampton.<sup>390</sup>

*Robert de Neville*<sup>391</sup> was, in 1262, at the head of the justices itinerant for the northern counties; the pleas, however, being confined to the forests.<sup>392</sup> As to such pleas, *William de Nottingham* was a justice

<sup>386</sup> Mentioned as among the justices of the Common Pleas in 50 Hen. III (1266); till Octo., 1272, there are continual entries of payments for assizes to be taken before him. *Id.*

<sup>387</sup> Grandson of John de Sumeri, who acquired the barony of Dudley, in Worcestershire, and son and (ultimately) heir of Ralph. He married Nichola, third sister and coheir of Hugh de Albini, earl of Arundel, on the partition of whose inheritance, in 28 Hen. III, he had the manor of Barewe, in Leicestershire, assigned for the chief seat. *Id.*

<sup>388</sup> He fought under the king at the battle of Lewes, and shared in his defeat and imprisonment. Afterwards he was one of those appointed to carry into execution the *dictum* of Kenilworth. He died in 1272, and was buried at the priory of Dudley. He had by his first wife four daughters, and by his second wife (Amabilia, daughter of Robert de Chaucomb, and widow of Gilbert de Segrave,) two sons and a daughter. The eldest son, Roger, succeeded; the family is represented in the House of Lords (partly through females) by the earldom of Dudley. *Id.*

<sup>389</sup> Son of Roger de Zouche, of Ashby, in Leicestershire, and of North Moulton, in Devonshire, who was grandson of the earl of Brittany. The grant to Alan, in 34 Hen. III, of the custody of the king's lands in Cheshire and North

Wales, included in his office of custos of Chester the power also of acting as king's justice there. In 41 Hen. III, he was justiciary of Ireland. From 45 to 50 Hen. III, he was sheriff of Northampton county. Foss's Biogr. Jurid.

<sup>390</sup> In 47 Hen. III, he was seneschal to the king. After the battle of Evesham, he was one of the persons nominated to carry into execution the dictum of Kenilworth. He was appointed June 25, 1267, constable of the Tower of London, and is inserted in the list of mayors, both in 1267 and 1268; his house was in Lime street. His death (before Octo. 20, 1270,) arose from an assault on him and his son Roger, in Westminster Hall, by John, earl Warren, for which a fine of 10,000 marks was imposed on that earl; he was compelled to make satisfaction before pardon for his offence. *Id.*

<sup>391</sup> Of the noble house of Raby, being son of Geoffrey de Neville, whose father, Robert Fitz-Maldred, lord of Raby, married Isabel, daughter, and ultimately heir of the first Geoffrey de Neville. In 45 Hen. III, Robert was made warden of the king's forests beyond Trent. *Id.*

<sup>392</sup> He then was appointed captain-general of the king's forces in those parts, sheriff of Yorkshire, and governor of the castles of York and Devizes. Although he for a time was with the barons against the king, yet he regained

itinerant in the northern counties in 46 and 54 Hen. III (1262-70).<sup>393</sup>

*Walter de Berstede*<sup>394</sup> was a justice itinerant in 1262, in Leicestershire, and next year in Norfolk, Suffolk and Lincolnshire.<sup>395</sup>

*William de Staunton* was, in 46 and 47 Hen. III (1262-3), a justice itinerant, with three others, in Cornwall, Devonshire, Dorset, and Somerset.<sup>396</sup>

*Richard de Hemington*<sup>397</sup> was a justice itinerant in the same years; he was a regular justicier till near the end of the reign.<sup>398</sup>

In 46 Hen. III a salary of £40 was granted to four justices of the bench. *Nicholas de Turri* (mentioned in § 27, p. 335, and § 34, p. 355), is introduced in this year among the justices of the Common Pleas with this grant.<sup>399</sup> *William Bonquer* (or Boncour),<sup>400</sup> is the last named of the four; he acted also in this and the next year as a justice itinerant.<sup>401</sup>

*Richard de Middleton* was a justicier in 46 Hen. III (1262), and continued to act as such till 1269.<sup>402</sup>

*William de Poywick*<sup>403</sup> was, in 46 and 47 Hen. III (1262-3) a jus-

the royal favour, and was entrusted with custody of the castles of Pickering and Bamburgh. He died in 1282, having had by his wife, Ida, widow of Roger Bertram, a son, two of whose representatives sat in the House of Lords as Earls Abergavenny and Westmoreland. Foss's Biogr. Jurid.

<sup>393</sup> He was sheriff or under-sheriff of Lincolnshire in 49 Hen. III. *Id.*

<sup>394</sup> He was sub-sheriff of Kent to Reginald de Cobbeham at his death in Dec., 1257, 42 Hen. III; and was appointed to act as sheriff for the remainder of the year. In 1262 he was constable of Dover castle, and custos of the Cinque Ports. *Id.*

<sup>395</sup> He is placed among justices of the bench in 50 Hen. III; a writ of assize was to be taken before him in the next September. *Id.* <sup>396</sup> *Id.*

<sup>397</sup> In 35 Hen. III, he (being professionally engaged) appeared before the king at Windsor on the part of John de Bailiol, who afterwards, in 52 Hen. III,

proceeded against him for delivering up Fotheringay castle to Baldwin Wake (the king's enemy and his) without his assent.

<sup>398</sup> *Id.*

<sup>399</sup> In the iters of 46 and 47 Hen. III, he stands at the head of all the commissions on which he is named. The only fine noticed by Dugdale, as having been acknowledged before him, is in 48 Hen. III. Foss's Biogr. Jurid.

<sup>400</sup> Employed in 1255 and 1259 on missions to the pope relative to the election of Prince Edmund to the crown of Sicily; and upon the peace with the king of France. In the letter of credence, on the latter occasion, he is called '*milite et mariscallo regis*.' (Rymer, i, 337, 386.) *Id.*

<sup>401</sup> The fines in which his name appears do not occur beyond Easter, 1265. *Id.*

<sup>402</sup> *Id.*

<sup>403</sup> Of the clerical as well as the legal profession. Foss's Biogr. Jurid.

tice itinerant in the counties of Huntingdon, Buckingham and Northampton.<sup>404</sup>

35. *The civil government, from the summer of 1263 until the treaty of May, 1265, known as the 'Mise of Lewes;' afterwards, until the battle of Evesham, in August, 1265; and from that time until the 'Dictum of Kenilworth,' in Nov., 1266. Especially of the chief justiciary, the Great Seal, the chancellors and treasurer.*

In 1263, on Sept. 8, the Oxford provisions were again proclaimed at St. Paul's; the name of Hugh le Despencer appears as justiciary of England to a mandate dated October 1. Probably this was the period at which, though the Great Seal remained in possession of *Nicholas de Ely*, it was with a prohibition from affixing it to any instrument not attested by *Hugh le Despencer*, the chief justiciary. In the parliament which met October 14th, there was a stormy debate.<sup>405</sup> The affairs of the Exchequer having got into great disorder, and no baron being resident there, the king, in November, directed, on the 1st, that *Roger de la Leye*<sup>406</sup> should fill the office of a baron there, and on the 30th, that he should execute the offices of treasurer and chancellor of the Exchequer.<sup>407</sup> In December, in the reference of the Oxford provisions to the king of France, *Philip Basset* is named without the addition of justiciary.<sup>408</sup> In 1263-4, an award was made, Jan. 23;<sup>409</sup> but it was not acquiesced in by the baronial party. At the battle of Lewes, May 14 (1264), the king and many of his supporters were taken prisoners; among them were *Philip Basset* and *Robert de Brus*.<sup>410</sup> In this battle *Hugh le Des-*

<sup>404</sup> He seems to have been raised to the bench in 50 Hen. III; for from July, 1266, till August in the next year, there are entries of no less than eleven writs of assize to be held before him. *Id.*

<sup>405</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 86, 87; Foss's Biogr. Jurid.

<sup>406</sup> An experienced officer of the Exchequer; in 35 Hen. III (1251), he held the office of remembrancer of the

Exchequer. Foss's Biogr. Jurid.

<sup>407</sup> In the next year he was directed to continue to act as baron and treasurer. *Id.*

<sup>408</sup> *Id.*

<sup>409</sup> *Id.*; 2 Stubbs's Const. Hist., ch. 14, pp. 88, 89; Select Charters, p. 397 to 400.

<sup>410</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 88, 89. Foss's Biogr. Jurid.

*pencer*, the chief justiciary, distinguished himself on the barons' side.<sup>411</sup>

*Harvey de Boreman*<sup>412</sup> was among the justices of the Common Pleas in 49 Hen. III, from Nov., 1264, till the following Easter.<sup>413</sup>

In 48 Hen. III (1264), *Arnald de Berkeley* was a baron of the exchequer, attesting a charter with that title;<sup>414</sup> *William le Mare-schall*<sup>415</sup> was appointed by the council one of the barons of the Exchequer; and *John de Chishull*<sup>416</sup> was chancellor of the Exchequer. "Records state that the king's signature was made to divers patents while the seal was in his custody."<sup>417</sup> In this year *Nicholas de Ely* resigned the office of chancellor and resumed that of treasurer.<sup>418</sup>

The treaty of peace known as the 'Mise of Lewes,' is mentioned by Mr. Stubbs in *Select Charters*, p. 400, *et seq.*, and in 2 Const. Hist., ch. 14, p. 90; "documents connected with Simon de Montfort's administration" are in the first mentioned volume.<sup>419</sup> His famous parliament was called together by writ of December 14th, to meet at Westminster on the 20th of January, 1265. By Sir *Robert Cotton*, (who died in 1631) it was said—

"The summonses to bishops, lords, knights and burgesses are

<sup>411</sup> After the king's defeat, no less than six castles were placed under Hugh's government with a grant of 1,000 marks for his support in his office. *Id.*

<sup>412</sup> Of a family which took its name from a village in Essex. He was an officer of the Exchequer, and belonged to the ecclesiastical profession, being a canon of St. Paul's. Foss's Biogr. Jurid.

<sup>413</sup> *Id.*

<sup>414</sup> He had manors in Merkele, Brade-feld and Brokhampton, in Herefordshire, and seems to have been living in 51 Hen. III. Foss's Biogr. Jurid.

<sup>415</sup> He was the second son of John Mareschall (mentioned in § 6, p. 283), and succeeded on his brother's death, in 1242, to the family property. *Id.*

<sup>416</sup> Archdeacon of London in 1262, and dean in 1268. *Id.*

<sup>417</sup> "And that he gave it up in February, 1265." *Id.*

<sup>418</sup> Madox ii, 319, is cited in Biogr. Jurid. Mr. Foss says: "In September, 1266, he was elected bishop of Worcester, from which see he was, on Feb. 24, 1267, translated to Winchester, over which diocese he presided about 12 years, and died on Feb. 12, 1280, at Waveley, in Surrey, where his body was buried, his heart being sent for interment at Winchester." *Id.*

<sup>419</sup> Writ of June 4, 1264, "for conservation of the peace and summons to parliament." *Select Charters*, pp. 402, 403. "Form of peace determined on in the 'parliament'" in June, 1264. *Id.*, p. 403 to 405. Summons of Dec. 13, 1264, to the parliament "*in Octavis Sancti Hilarii proximo*." *Id.*, p. 406.

much in manner, though not in matter, alike to the use of our times. This parliament was called to advise with the king *pro pace asseveranda et firmanda*; they are the words; and where advice is required, consultation must be admitted."<sup>420</sup>

Since Cotton's day this parliament has been the subject of much observation.<sup>421</sup>

Its great feature "was the representation of the shires, cities and boroughs: each sheriff had a writ ordering him to return two discreet knights from each shire; a like summons addressed to the cities and boroughs, ordered two representatives to be sent from each, and the barons of the *Cinque Ports* had a similar mandate. The writs to the cities and boroughs are not addressed to them through the sheriff of the county, as was the rule when their representatives became an integral part of the parliament, and so far the proceedings of Simon do not connect themselves directly with the machinery of the county court; nor is there any order for the election of the representatives, but the custom of election was so well established that it could not have been neglected on this occasion."<sup>422</sup>

*Thomas de Cantilupe*<sup>423</sup> was in 1265, on February 21, selected by the barons to fill the chancellorship.<sup>424</sup>

The parliament continued its session until late in March; its chief business being the conclusion of the arrangements entered into in the Mise of Lewes.<sup>425</sup>

<sup>420</sup> Printed in 1679, and reprinted in Harl. Miscel., vol. 8, p. 218, of edi. 1810.

<sup>421</sup> 3 Lingard's Engl., ch. 14, p. 160, *et seq.*; Green's Short Hist., ch. 3, § 7, p. 180; Green's Hist. of Engl. Peop., book 3, ch. 3, p. 299, of vol. 1.

<sup>422</sup> 2 Stubbs's Const. Hist., ch. 14, p. 93.

<sup>423</sup> Grandson of William de Cantilupe (mentioned in ch. 13, § 4). About the beginning of the reign of Hen. III, Thomas was born at his father's manor of Hameldone, in Lincolnshire. Under the advice of his uncle Walter (mentioned in § 14, p. 308), who became bishop of Worcester, Thomas was brought up with a view to the clerical profession, and studied at Oxford, under Robert Kilwarby, who became archbishop of Canterbury and a cardinal. Thomas afterwards removed to Paris,

and applied himself to the study of philosophy, in the college of Sorbonne, whence he proceeded to Orleans to read the civil law with an eminent professor. Returning to Oxford, he applied himself to the canon law and proceeded doctor. The eminence of his learning pointed him out, in 1262, as worthy to fill the office of chancellor of the university; in performing his official duties, in the suppression of a riot between southern and northern scholars, he is said to have greatly exerted himself, to the injury of his person. Foss's Biogr. Jurid.

<sup>424</sup> *Id.*

<sup>425</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 93, 94. *Confirmationes Regis Henrici III, xiv die Martii anno regni xlix* M. C. C. LXIV-V, is in 1 Stat. of the Realm, p. 31, of edi. 1810, and in Stubbs's Select Charters, p. 407 to 409.

In this year (1265) *Nicholas de Criol*<sup>426</sup> and *Alexander le Seculer*<sup>427</sup> are mentioned as barons of the Exchequer.

During the chancellor's temporary absence the Great Seal was placed, May 7, 1265, in custody of *Ralph de Sandwich*,<sup>428</sup> to be kept by him under the seals of *Giles de Argentine*,<sup>429</sup> (one of the council,) and two others who were clerks of chancery.<sup>430</sup>

At Evesham on the 4th of August the verdict of Lewes was reversed; and Simon of Montfort, the great earl of Leicester, was slain.<sup>431</sup> With him fell *Hugh le Despencer*, the chief justiciary. It does not appear that *Philip Basset* was replaced in his office. But in the room of *Thomas de Cantilupe*<sup>432</sup> the king appointed *Walter Giffard*<sup>433</sup> chancellor. He was translated to the archbishopric of York, October 18, 1266; soon after which he is believed to have resigned the Great Seal.<sup>434</sup>

<sup>426</sup> Son of Bertram de Criol, who was apparently an officer in the Exchequer and sheriff of Kent for many years. Nicholas was entrusted with the sheriffalty of Kent in 48 Hen. III; and made governor of Rochester castle and warden of the Cinque Ports. He died in 1272. Foss's Biogr. Jurid.

<sup>427</sup> Of a family in Herefordshire. As the king's 'beloved clerk,' Alexander was constituted one of the barons in Easter, 1265. *Id.*

<sup>428</sup> Of a knightly family in Kent, in which county he held the manors of Eynsford and Ham. In 49 Hen. III, he was keeper of the wardrobe. Foss's Biogr. Jurid.

<sup>429</sup> Mentioned in § 28, p. 340. After the battle of Lewes he joined the barons, and was selected as one of the council to govern the realm. He died in 1283. *Id.*

<sup>430</sup> Mr. Stubbs publishes as in 1265, May 15, a "summons to parliament at Winchester," the first day of June. Select Charters, p. 409.

<sup>431</sup> Green's Short Hist., ch. 3, § 7, pp. 181, 182; Hist. of Engl. Peop., book 3,

ch. 3, p. 304, of vol. I.

<sup>432</sup> He retired to Oxford, and completed a course of divinity by taking the degree of doctor. In 1266 he was appointed archdeacon of Stafford; to which were added 'many and fat benefices.' He was elected bishop of Hereford June 20, 1275. In returning from a visit to Rome, he died at Monte Fiascone Aug. 25, 1282, in the 63d year of his age. His bones were removed to England, and entered in his cathedral. He was canonized by Pope John April 17, 1320, and is mentioned as "the last Englishman so honored." Foss's Biogr. Jurid.

<sup>433</sup> Son of Hugh Giffard, and his wife, Sibella de Cormaill. He became a canon of Wells, and a chaplain to the pope; and May 22, 1264, was elected bishop of Bath and Wells. Foss's Biogr. Jurid.

<sup>434</sup> He still continued a member of the king's council, and, in 54 Hen. III, was sheriff of the counties of Nottingham and Derby, an office which he filled from that time till 1 Edw. I. *Id.*

The severity of the parliament at Winchester in September did not restore tranquility; the garrison of Kenilworth braved the royal power until publication of the ordinance known as the 'Dictum of Kenilworth'; which was proclaimed in the castle of Kenilworth the day before the kalends of November, A. D., 1266.<sup>485</sup>

36. *As to Articuli Cleri; what was done at a parliament in 51 Hen. III. Alienation from the papal see and papal institutions.*

Upon the canons mentioned in § 31, p. 347, the courts being at variance, there was a parliament in 51 Hen. III, at which Boniface and the rest of the clergy exhibited as grievances articles called *Articuli Cleri*, some of the answers to which are extant.<sup>486</sup> Thereof *Ld. Coke* observes "that none of Boniface's canons against the laws of the realm, and the crown and dignity of the king, and the birth-right of the subject, are here confirmed."<sup>487</sup>

During this reign "the opposition to the papal see took deep and lasting root in England; the minds of the great became visibly alienated, not only from the Pope, but also from his most effective institutions; parliament frequently expressed the new sentiment, and called for the diminution of the clerical power in the subtraction of its affluence; the lettered mind became critical on the opinions of the church."<sup>488</sup>

37. *The statute of Marlbridge (52 Hen. III); which conceded much that had been asked for in the parliament of Oxford, in June, 1258; and reenacted the provisions of 1259. How the shires were represented in 52 Hen. III.*

"Many fearful and dangerous troubles and dissensions" having

<sup>485</sup> Select Charters, p. 402; 2 Stubbs's Const. Hist., ch. 14, pp. 96, 97. The ordinance is dated '*Secundo kalendas Novembris anno gratie*,' 1266. 1 Stat. of the Realm, 12 to 17; Select Charters, 410 to 416.

<sup>486</sup> 2 Inst. 599. *Ld. Coke* says: "The articles exhibited by the clergy, either by accident or industry, are not to be found." *Id.*

<sup>487</sup> 2 Inst. 600. *Ld. Coke* says: "What the residue of the articles and the answers were, may be collected by

that act of parliament, entitled *prohibitio formata de statuti*, which was made in the time of Edward the first, about the beginning of his reign, which beginneth thus: '*Edwardus &c., prelati*,' &c., wherein divers points are to be observed against the canons of Boniface.' *Id.*, 600.

<sup>488</sup> 1 Turner's Engl., ch. 12, p. 449; Green's Short Hist., ch. 3, § 6, p. 171; Green's Hist. of Engl. Peop., book 3, vol. 1, ch. 3, pp. 279, 280.

grown out of the fact, "that the king sometimes allowed and sometimes disallowed *Magna Charta* and *Charta de Foresta*;"<sup>439</sup> now, in the 52d year of the king's reign (1267), "the more discreet men of the realm being called together, as well of the higher as of the lower estate," and it being desired to have 'peace and tranquility,' it was, in parliament at Marlebridge,<sup>440</sup> considered the remedy should be, 1, the "establishing of *Magna Charta* and *Charta de Foresta*,"<sup>441</sup> as is done in chapter 5;<sup>442</sup> and, 2, such further enactments as are made by the statute of Marlebridge, the first of which has the subjoined preamble,<sup>443</sup> and is as follows:

"That all persons, as well of high as of low estate, shall receive justice<sup>444</sup> in the king's court<sup>445</sup>; and none from henceforth shall take

<sup>439</sup> 2 Inst., 102.

<sup>440</sup> "Now called Marleborough, a town in Wiltshire, the greatest fame whereof is the holding of this parliament there." 2 Inst., 101.

<sup>441</sup> Ld. Coke observes: "That after this parliament neither *Magna Charta* nor *Charta de Foresta* was ever attempted to be impugned or questioned: whereupon 'peace and tranquility,' whereof" the "preamble speaketh, have ever since ensued." 2 Inst. 102, 108.

<sup>442</sup> See post, p. 365.

<sup>443</sup> "Whereas, at the time of a commotion late stirred up within this realm, and also sithence, many great men, and divers others, refusing to be justified by the king and his court, like as they ought, and were wont in time of the king's noble progenitors, and also in his time, but took great revenges and distresses of their neighbours, and of others, until they had amends and fines at their own pleasure; and, further, some of them would not be justified by the king's officers, nor would suffer them to make delivery of such distresses as they had taken of their own authority." 2 Inst., 102; 1 Stat. of the Realm, 19.

<sup>444</sup> It follows—I. "That all men, high and low, must be justified—that is, have

and receive justice in the king's courts of justice. 2. That no private revenge be taken, nor any man, by his own arm or power, revenge himself; and this article is grounded upon the law of God, *vindicta est mihi et ego retribuam*, saith Almighty God. All revenge must come from God, or from his lieutenant, the king, in some of his courts of justice. 3. That all the subjects of the realm ought to be justified—that is, submit themselves to the king's officers of justice according to law. 4. That they ought to suffer replevies to be made according to the law, to the end that men may possess their horses, beasts, and other cattle, and goods in peace, whereof they have so great and continual use." 2 Inst., 103.

<sup>445</sup> For all causes ought to be heard, ordered and determined before the judges of the king's courts, openly in the king's courts, whither all persons may resort, and in no chambers or other private places, for the judges are not judges of chambers but of courts; and therefore in open court, where the parties, counsel and attorneys attend, ought orders, rules, awards and judgments to be made and given, and not in chambers or other private places, where



any such revenge or distress of his own authority, without award of our court, though he have damage or injury, whereby he would have amends of his neighbour, either higher or lower. And upon the aforesaid article it is provided and granted, that if any, from henceforth, take such revenges of his own authority, without award of the king's court, (as before is said,) and be convict thereof, he shall be punished by fine; and that, according to the trespass. And likewise if one neighbor take a distress of another, without award of the king's court, whereby he hath damage, he shall be punished in the same wise, and that after the quantity of trespass. And nevertheless sufficient and full amends shall be made to them that have sustained loss by such distresses."<sup>446</sup>

After enactments in chapters 2, 3 and 4,<sup>447</sup> it is provided as follows:

5. "The great charter<sup>448</sup> (1) shall be observed in all his articles, as well in such as pertain to the king as to other; and that shall be enquired afore the justices in eyre in their circuits, and afore the sheriffs in their counties when need shall be. And writs shall be freely granted against them that do offend before the king, (2) or the justices of the bench, (3) or before justices in eyre when they come into those parts. Likewise the charter of the forest shall be observed in all his articles, and the offenders, when they be convict, shall be grievously punished by our sovereign lord, the king in the form above mentioned." (4)

After chapters 6,<sup>449</sup> 7, 8 and 9 there is the following:

10. "For the turn<sup>450</sup> of sheriffs, it is provided that archbishops,

a man may lose his cause, or receive great prejudice or delay in his absence for want of defence. Nay, *that judge that ordereth or ruleth a cause in his chamber*, though his order or rule be just, yet *offendeth he the law* (as here it appeareth), because he doth it not in court. And the opinion is good, and agreeable to this law, *qui aliquid statuerit parte inaudita altera, æquum licet statuerit, haud æquus fuerit*. Neither are causes to be heard upon petitions, or suggestions, or references, but *in curia domini regis*." 2 Inst., pp. 103, 104.

<sup>446</sup> 2 Stat., 102; 1 Stat. of the Realm, 19.

<sup>447</sup> Which may be noticed in a future edition of 2 Rob. Pract.

<sup>448</sup> (1.) "By this time this charter had

got the name of *Magna Charta*, and by that name only is here confirmed." 2 Inst., 108.

(2.) "That is, in the king's bench." 2 Inst., 108.

(3.) "That is," according to Ld. Coke, "in the court of common pleas." 2 Inst., 108. So, in ch. 7, where the words are '*coram justiciariis*,' he says, "this is before the justices of the court of common pleas." *Id.*, 114.

(4.) 2 Inst., 108; 1 Stat. of the Realm, 20.

<sup>449</sup> Robert Walrand, who penned and preferred this 'was learned in the laws of the realm.' 2 Inst., 199. See of him § 27, p. 335, § 33, p. 354.

<sup>450</sup> "This tourne of the sheriff is '*curia vice-com franci plegii*' (as it hath been said), and therefore this act extendeth

bishops, abbots, priors, earls, barons nor any religious men or women,<sup>451</sup> shall not need to come thither, except their appearance be especially required thereat for some other cause; but the turn shall be kept as it hath been used in the times of the king's noble progenitors. And they that have hundreds<sup>452</sup> of their own to be kept, shall not be bound to appear at any such turns, but in the bailiwicks where they be dwelling. And the turns shall be kept after the form of the great charter, and as they were used in the times of king Richard and king John."<sup>453</sup>

This chapter, which is numbered 25 in 2 Inst., 147, and 24 in 1 Statutes of the Realm, 25, is as follows:

"The justices in eyre from henceforth shall not amerce townships in their circuits, because all being twelve years old came not afore the sheriffs and coroners, to make inquiry of robberies, burnings of houses or other things, pertaining to the crown; so that there come sufficient out of those towns, by whom such inquests may be made full; except inquests for the death of man, whereat all being twelve years of age ought to appear, unless they have reasonable cause of absence."<sup>454</sup>

to all leets and views of frank pledge, of all other lords and persons." 2 Inst. 121.

<sup>451</sup> "Before the making of this statute, the sheriff in his tourne, and the lords of leets, did use to amerce archbishops, priors, earls, barons, religious men and women, if they came not to the tournes, or to the leets of others, because for suit real no distress can be taken, but for the amerciements for default of suit, which this act doth remedy." 2 Inst., 120.

"By the common law, parsons of churches, that had *curam animarum*, the better to perform their function, were not compellable to come to tournes or leets; and if they were distrained to come thither, they might have a writ," (grounded upon the common law). "But other clerks (that be no parsons of churches with cure), under which name all ecclesiastical persons, regular and secular, are contained, if they be distrained to come to tourne or leet, they shall have a writ reciting this statute." 2 Inst., 121. "So likewise women shall have the like writ." *Id.*

<sup>452</sup> "Here *hundredum* is taken *pro visu franci plegii*; so as the sense is that he which hath tenements in the tourn, and in some other view of frank pledge of some other lord, or in divers views of frank pledge, he shall not need to come to any other but where he is conversant, and hundreds here are named, because sheriffs (as hath been said) kept their tournes in every hundred." 2 Inst., 122.

<sup>453</sup> 2 Inst., 109; 1 Stat. of the Realm, p. 22.

<sup>454</sup> Before this statute there were two mischiefs. 1. "That if the sheriff did present before the justices in eyre that those of the age of twelve years came not to the tourn, that the townships where they dwelt should be amerced;" it was said they should be sworn "(amongst other things) that they should do no felony, nor assent to any, and therefore, although they could not be present *ad inquis' faciend.*, being under age of 21, yet they ought to be there to take the oath, and to discover felonies, if any they knew, according to their oath." 2. "That when any robbery,

Mr. Stubbs observes that "the parliament of Marlborough, November 18, 1267, reenacted the provisions of 1259, as a statute;"<sup>455</sup> and that "except the demand for the appointment of ministers and the election of sheriffs, the statute of Marlborough concedes almost all that had been asked for in the mad<sup>456</sup> parliament; and from its preamble it seems not improbable that the shires were represented by their chosen knights in the assembly that passed it."<sup>457</sup>

38. *Of the treasurer and chancellor of the exchequer, and the custody of the Great Seal, from 50 Hen. III. (1266) until the end of the reign. Richard de Middleton, keeper of the Great Seal in 1269, was afterwards raised to the dignity of chancellor.*

In 50 Hen. III. *Thomas de Wymundham*, (mentioned in § 29,) was addressed as treasurer of the exchequer.<sup>458</sup> *Godfrey Giffard*<sup>459</sup> occupied in May, 1266, the post of chancellor of the exchequer.<sup>460</sup>

After the promotion (Octo. 18, 1266) of Walter Giffard to the archbishopric of York, *Godfrey Giffard* was appointed chancellor. In 1268 though he was elected bishop of Worcester in June, yet he continued chancellor till October 29th. On the 30th the Great Seal was again committed to the custody of *John de Chishull*;<sup>461</sup> he retained it till the end of July, 1269. In February, 1270, he was constituted

burning of houses, homicide or other felony was done, the sheriff, for so much as pertained to him, or the coroner in case of the death of man, would summon many townships, and sometime a whole hundred, where twelve would serve to make enquiry; and if all did not appear according to the summons, they would present the same before the justices in eyre, when the whole townships or hundred were amerced, albeit many times a sufficient number to make enquiry did appear." This statute provides one remedy for both the mischiefs. 2 Inst., 147.

<sup>455</sup> 1 Stat. of the Realm, pp. 19-25. The statute of Marlborough remains in force in England, and is in 1

"Statutes Revised," edi. 1870, p. 6 to 15.

<sup>456</sup> The parliament of Oxford in June, 1258, was, by the king's partizans, called the mad parliament. 2 Stubbs's Const. Hist., ch. 14, p. 79.

<sup>457</sup> *Id.*, pp. 96, 97.

<sup>458</sup> In 52 Hen. III, he received the precentorship of Lichfield. This is the last year in which he is described as treasurer; but he was alive in 1275. Foss's Biogr. Jurid.

<sup>459</sup> Brother of Walter Giffard, archbishop of York, Nov. 6, 1265, collated archdeacon of Barum (Barnstaple.) *Id.*

<sup>460</sup> And had permission to appoint a substitute to act during his absence. *Id.*

<sup>461</sup> Mentioned in § 35, p. 360, and *note*.

treasurer; in this office he continued about two years.<sup>462</sup>

*Roger de la Leye* (mentioned in § 36) was in 52 Hen. III. again constituted chancellor of the exchequer, and remained so until about 1270, when *William de Clifford*<sup>463</sup> became his successor, with a salary of £40 a year.<sup>464</sup>

*Richard de Middleton* (mentioned in § 35) was at the end of July, 1269, appointed keeper of the Great Seal, but was afterwards raised to the dignity of chancellor.<sup>465</sup> On his death (August 7, 1272) the Great Seal was delivered into the king's wardrobe under the seal of *John de Kirkeby*<sup>466</sup> who, it is believed was then either an officer of the Exchequer or a clerk of the chancery.<sup>467</sup>

39. *Of the justices generally from 50 Hen. III. (1266) until the end of the reign.*

*John de la Lynde*<sup>468</sup> acted as a justiciar in Yorkshire. His name appears as such in Trin. 1266, on a fine, in the next year on pleas of the court, and in May, 1270, in a payment for an assize to be taken before him in Essex.<sup>469</sup>

<sup>462</sup> His election to the bishopric of London was Dec. 7, 1273. He died Feb. 8, 1280, and was buried in St. Paul's. Foss's Biogr. Jurid.

<sup>463</sup> Whose name is frequently abbreviated in the Rolls to Cliff. He was the king's escheator, on the south side of Trent, from Octo., 1265, till May, 1268; and does not appear as a baron of the Exchequer until 55 Hen. III (1270). Foss's Biogr. Jurid.

<sup>464</sup> *Id*

<sup>465</sup> By which title he is designated in a document in Rymer (i., 492), dated Feb. 20, 1272, and in the record mentioning his death, which took place while in office, on the 7th of the following August. Foss's Biogr. Jurid.

<sup>466</sup> Rector of the church at St. Berian in Cornwall, dean of Wimburn in Dorsetshire, a canon in the cathedrals of Wells and York, and in 1272 (56 Hen. III) archdeacon of Coventry. *Id.*

<sup>467</sup> On the king's death, Nov. 16, fol-

lowing, the seal was delivered up by him to the king's council. *Id.*; citing 7 Rep. Pub. Rec., App. ii, 239, for the statement that among the records in the Tower there is "a letter addressed to him as the king's vice-chancellor about this time."

<sup>468</sup> 'Of ancient descent and special note,' in Dorset county, where he was bailiff or Blakemore forest. One of his family, probably himself, having killed a white hart which Henry III while hunting had spared on account of its beauty, was not only imprisoned and fined, but his lands were subjected to an annual tax under the name of the 'White Hart Silver.' He resided at Hartley in Great Minton. In 1250 he was joint custos of the city and tower of London. At some period he was employed in Gascony by the king. Foss's Biogr. Jurid.

<sup>469</sup> In 1272 he died possessed of manors and lands in six counties. *Id.*

*John Le Breton*<sup>470</sup> was raised to the bench at the end of 50 Hen. III. In the next year the keeper of the wardrobe was directed by the king to supply '*Johanni le Breton et Henrico de Monteforti, justiciariis suis*' with the full robes which the other judges were accustomed to be provided with.<sup>471</sup>

To the bench *Henry de Monteforti*<sup>472</sup> was raised about October, 1266;<sup>473</sup> and *John Le Moyne*<sup>474</sup> and *William de Poywick*<sup>475</sup> about the same time.<sup>476</sup>

*Roger de Messenden*<sup>477</sup> was raised to the bench at midsummer on or before 51 Hen. III. (1267); he is mentioned as one of the justices of the bench before whom Robert de Coleville apologized for an assault on Robert de Fulham, justice of the Jews, in Mich. T. 1268. *Robert Fulcon* was raised to the bench in September, 1267.<sup>478</sup>

In 52 Hen. III. (1268) *William de Grancurt* and *Simon Passelewe* are noticed as barons of the Exchequer.<sup>479</sup>

*Peter de Brus*, son of Peter de Brus or Bruis (mentioned in § 12, p. 302) was a justice itinerant for Yorkshire in 52 Hen. III. (1268.)<sup>480</sup>

<sup>470</sup> Son of a knight of that name who was buried (with his wife) at Abbey Dore, in Herefordshire. In 38 Hen. III, the county and castle of Hereford were in his custody. *Id.*

<sup>471</sup> Selden's Hengham Magna, 5; cited in Biogr. Jurid. Mr. Foss adds: "The entries of assizes before him continue till the end of Dec., 1268, or beginning of Jan., 1269. On the 13th of the latter month the king consented to his election as bishop of Hereford, when he no doubt retired from the bench. He was consecrated in July (1269), and presided over the see about six years, dying in May, 1275 (3 Edw. I)."

<sup>472</sup> With the addition of 'Clericus,' he appears, in 48 Hen. III (1263), as an escheator south of the Trent; and also as one of the conservators of the peace in Kent. Foss's Biogr. Jurid.

<sup>473</sup> Thenceforth, till the end of the reign, fine rolls contain entries of writs for assizes before him. *Id.*

<sup>474</sup> Mentioned, *ante*, p. 348, Dec. 3, 1265, he and *Robert de Fulham* were constituted justices of the Jews; but he did not long remain in this office. *Id.*

<sup>475</sup> Mentioned in § 34, p. 358.

<sup>476</sup> At the end of Sept., 1266, there are entries of assize to be held before them, which extend to August, 1267, in the counties of Hereford, Gloucester and Worcester. Dec. 25, 1268, John Le Moyne appears as the king's escheator south of Trent; there are mandates to him in that character till Aug. 1, 1270. He died about 1274. Foss's Biogr. Jurid.

<sup>477</sup> A chaplain of the king; presented by him to Colchyrch in London. Foss's Biogr. Jurid.

<sup>478</sup> *Id.*

<sup>479</sup> *Id.*

<sup>480</sup> In the next year he was appointed constable of Scarborough castle. He died Sept. 18, 1272. Foss's Biogr. Jurid.

During the whole of 52 Hen. III. *Adam de Cestreton*<sup>481</sup> was performing the functions of a justiciar.<sup>482</sup>

*John de Cobbeham*<sup>483</sup> was in 52 Hen. III. a justice itinerant for Surry and Kent, and was advanced to the bench at Westminster in February, 1270, 54 Hen. III.<sup>484</sup>

*Walter de Helyan* is described in the Patent Roll of 52 Hen. III. as '*justiciarius noster*' and continued in office to the end of the reign.<sup>485</sup>

*John de Oketon*<sup>486</sup> was a justice itinerant in various counties from 52 to 56 Hen. III; and a regular justiciar up to October 29, 1272.<sup>487</sup>

*Lawrence del Broke*<sup>488</sup> was raised to the bench before Feb. 1267-8, and remained in office till the end of the reign.<sup>489</sup>

*Roger de Seyton* was a justiciar from April 1268 (52 Hen. III) till the end of the reign.<sup>490</sup>

*John de le Strode* was a justice itinerant in 52 Hen. III (1268), for Somersetshire, Dorsetshire and eleven other counties.<sup>491</sup>

<sup>481</sup> Before 17 Hen. III, the king founded a house for the maintenance of converted Jews, in the street then called 'New street,' but now known as Chancery Lane, endowing it with many houses and lands, and bestowing on it the church of St. Dunstan, in Fleet street. Over this '*Domus conversorum*' a custos was appointed. *Adam de Cestreton*, an ecclesiastic and an officer of the court, received, in 50 Hen. III (1265), a grant of the custody of this house for his life. *Id.*

<sup>482</sup> He died at the beginning of the next year. *Id.*

<sup>483</sup> Son of John de Cobbeham (mentioned in § 23, p. 327); was made constable of Rochester castle so early in life that he was called the young constable; he was entrusted with the sheriffalty of Kent for four years, from 44 Hen. III. His seat was at Monkton, in the isle of Thanet. Foss's Biogr. Jurid.

<sup>484</sup> Mr. Foss says, "in which court is uncertain, as the mode of designating

them was then scarcely fixed." *Id.*

<sup>485</sup> *Id.*

<sup>486</sup> Was sheriff of Yorkshire in 44 Hen. III, and for several subsequent years; in 52 Hen. III, there is an entry that he could not levy the ferm for the county '*propter turbationem regni.*' *Id.*

<sup>487</sup> *Id.*

<sup>488</sup> An advocate of very high standing; employed as early as 1253 on the part of the crown; there being no less than seventeen entries in that year in which he acted for the king in suits before the court. He resumed that position in 1260, and was regularly engaged in the king's behalf until Christmas, 1267. *Id.*

<sup>489</sup> He died in 3 Edw. I, in possession of considerable property in the counties of Buckingham, Kent, Hertford and Oxford. *Id.*

<sup>490</sup> Foss's Biogr. Jurid.

<sup>491</sup> He was of a family holding in those counties large estates, which descended from Warinus de la Strode, a companion of the Conqueror. *Id.*

*Thomas Trevett*<sup>492</sup> acted as a justice itinerant for Dorsetshire and neighboring counties from 52 to 55 Hen. III.<sup>493</sup>

*Robert Walerand* (mentioned in § 27, p. 335, § 34, p. 354 note 371 and § 37, p. 365) was restored to his place on the bench at least as early as April, 1268.<sup>494</sup>

The designation of 'Magister,' always placed before the name of *Richard de Stanes*, proves him a clerical judge. He seems to have acted as a justice itinerant before he became a justicier, visiting eleven counties in the former capacity in 52 Hen. III (1268), while his appointment as a justice of the King's Bench did not take place till the following year. From July, 1269, till the end of the reign, there are frequent entries of assizes to be held before him. In 55 Hen. III, he is specially mentioned as a '*justiciarius ad placita tenenda coram rege*;' and in the last month of the reign, 1272, he had a salary of £40 a year assigned to him."<sup>495</sup>

*Roger de Clifford*<sup>496</sup> was, in 1269, at the head of the justices itinerant in Rutland and five other counties.<sup>497</sup>

<sup>492</sup> Said to be descended from a family of note in Norfolk. He was appointed, in 49 Edw. III, to assess the tallage on the 'Villam de Shaftonia,' in Dorsetshire. He was the father of *Nicholas Trevet*, author of numerous works, one of which, entitled '*Annales sex regum Angliæ qui a comitibus Andegavensibus originem tulerunt*,' was published in 1845 by the English Historical Society. *Id.*

<sup>493</sup> In Aug., 1272 (56 Hen. III), the priory and cathedral of Norwich having been maliciously burnt, he was, according to his son's statement in the '*Aunales*' (279), sent there to try the malefactors. He died in 11 Edw. I. His son became a Dominican friar, and is stated to have been prior of their monastery in London, and to have died in 1328. *Id.*

<sup>494</sup> Mr. Foss mentions "the frequent entries of assizes to be held before him"

from April, 1268, till August, 1271, and states that "he died about Edw. I, and was found possessed of 16 manors and extensive possessions in 8 counties." *Id.*

<sup>495</sup> *Id.*

<sup>496</sup> He traced his descent from Richard, Duke of Normandy, grandfather of William, the Conqueror. Roger, grandson of Fair Rosamond's father, married Sibilla, daughter and heir of Robert de Ewyas, and widow of Lord Tregoz. The son of Roger and Sibilla was Roger, (a minor at his father's death in 16 Hen. III), who attended the king in his expedition into France in 43 Hen. III. He was on the king's side at Northampton, and in Wales, and at Evesham. In 1266 he was justice of the forests south of the Trent, the duties of which office he performed till he went to the Holy Land, in 1270. Foss's Biogr. Jurid.

<sup>497</sup> *Id.*

*John de Reygate*<sup>498</sup> was a justicier from May, 1269, to August, 1271.<sup>499</sup>

*William de St. Omero*<sup>500</sup> had a grant, in the 53d year, of a salary of £40 '*quamdiu placitis prædictis intenderit.*'<sup>501</sup>

January, 1270 (54 Hen. III), is probably the date of the appointment of *Ralph de Hengham*,<sup>502</sup> as a justice of the King's Bench. The entries of assizes before him are very numerous; and the rapidity with which he established his reputation in the court is evinced by his standing at the head of the circuits during the next two years till the end of the reign.<sup>503</sup>

*Nicholas de Yattinden*<sup>504</sup> had writs of assize addressed to him from Sept., 1270, to Aug., 1271 (54 and 55 Hen. III); in the next year is a record of a trial before him '*et sociis suis*' in which he is called '*justic. domini regis.*'<sup>505</sup>

*Stephen Heym*, a justice of the Common Pleas at Easter, 55 Hen. III (1271); there are writs of assize in his name till the end of the reign.<sup>506</sup>

*Ralph de Marsh*, as abbot of Croyland,<sup>507</sup> stands at the head of the justices itinerant, in 56 Hen. III, for Leicester county.<sup>508</sup>

*John de Spalding*, prior of Spalding, was eminent for his knowledge of the laws, and had been summoned to council in 49 Hen. III. He was a justice itinerant in Essex in 56 Hen. III (1272).<sup>509</sup>

<sup>498</sup> In 52 Hen. III, king's escheator north of Trent; an office which he held to the end of the reign. *Id.*

<sup>499</sup> *Id.*

<sup>500</sup> Had custody of the castle of Hereford, in 38 Hen. III. *Id.*

<sup>501</sup> *Id.*

<sup>502</sup> Son of Sir Andrew de Hengham, of a knightly family, seated at St. Andrew's manor at Hengham, in Norfolk. He was brought up to the then commonly united professions of the church and the law, in the former of which he held a canonry in St. Paul's, and the chancellorship of Exeter, to which he was collated in 1275, but which he re-

signed within three years and a half. Foss's Biogr. Jurid. <sup>503</sup> *Id.*

<sup>504</sup> Married Aliva, widow of *Henry de Balhonia* (mentioned in § 33, p. 355). In 53 Hen. III, Windsor castle and forest, with other manors, were placed in his charge. *Id.*

<sup>505</sup> He died in 1 Edw. I, possessed of considerable property in Berkshire and Norfolk. *Id.*

<sup>506</sup> Foss's Biogr. Jurid.

<sup>507</sup> He had been a monk there; he was raised to the abbacy about Octo., 1254. *Id.*

<sup>508</sup> He died on Michaelmas day, 1281. *Id.* <sup>509</sup> *Id.*



In 1272, *William de Weyland*<sup>510</sup> was a justice itinerant for Leicestershire county; and was appointed a justicier of Westminster.<sup>511</sup>

His son, *Thomas de Weyland*, was, in 1272, associated with *Roger de Seyton* as a justice itinerant into the counties of Essex and Hertford.<sup>512</sup>

40. *Of men at the head of courts from 51 Hen. III, until the end of the reign; Nicholas de Turri, in 51 Hen. III; Robert de Brus, in 1268, 'capitalis justiciarius;' Gilbert de Preston, in 1269, with a grant of 100 marks annually. What was the position of Henry de Bracton; whether he became chief justice.*

In 51 Hen. III a writ directing the removal of a process from his court to the Exchequer, is addressed '*Nicholao de Turri*<sup>513</sup> *et sociis suis justiciariis*' (Madox i, 236); which (Mr. Foss observes) would seem to imply that he was then at the head of the court.<sup>514</sup>

*Robert de Brus*. (mentioned in § 27, p. 335, § 28, p. 341, and § 35, p. 359), who had, in October, 1266, resumed a place on the bench, was, March 8, 1268, appointed '*capitalis justiciarius ad placita coram rege tenenda*.' It is stated by Mr. Foss that he is "the first who was distinctly constituted chief justice of the King's Bench;" and that "he had a salary of one hundred marks assigned to him."<sup>515</sup>

*Gilbert de Preston*, mentioned in § 23, p. 327, before whom there were pleas as stated below,<sup>516</sup> is, in 1268, called '*justiciarius de banco*'

\*<sup>510</sup> Son of Herbert de Weyland, and Beatrix, his wife. From Sept., 1261, he was escheator south of Trent; there is an instance of a mandate to him in that character, April 24, 1265. *Id.*

<sup>511</sup> *Id.*

<sup>512</sup> *Id.*

<sup>513</sup> Mentioned in § 34, p. 355.

<sup>514</sup> He died, most probably, in 1270, when he ceased to act; if so, he would then have sat on the bench between 19 and 20 years. An entry in 51-52 Hen. III, relative to land at Gretelington, in Wiltshire, indicates that he was parson of the church of All Saints in that place. Foss's Biogr. Jurid.

<sup>515</sup> He does not appear on the judicial bench after Edward's accession, and nothing is related of his career during

the years which intervened before the death, in 1290, of Margaret, queen of Scotland, when he became a competitor for the crown of that kingdom. There being a reference to Edw. I, and his decision (in 1292) being in favour of John Baliol, Robert de Brus retired in disgust. He died in 1295, at his castle of Lochmaben, and was buried at the monastery of Gisburne (in Cleveland), which had been founded by his ancestor, the first Robert. Foss's Biogr. Jurid.; 1 Buchanan's Scotland, book 8, p. 390, *et seq.* of vol. 1, ed. 1827.

<sup>516</sup> At Westminster, in 1263, before him and John de Wyvill; and, in 1267, before him and John de la Lynde. Foss's Biogr. Jurid.

(Madox i, 236), and was at the head of the justices itinerant in various counties. In 1255 his salary was 40 marks *per annum*; in 1269 he had a grant of one hundred marks annually for his support '*in officio justiciarie*.' But the actual title of chief justice does not appear to have been applied to him till the following reign.<sup>517</sup>

*Henry de Bracton* (mentioned in sections 23, and 27, p. 327, and p. 334) was undoubtedly a great lawyer, and has been spoken of as chief justice in the reign of Henry III.<sup>518</sup> There is an interval after the death of Hugh le Despencer, in 1265, and before the appointment of Robert de Brus, in 1268, during which Bracton, whose judicial duties did not terminate till 1267, might possibly have held the office of chief justice; but Mr. Foss thinks there is want of proof that he attained that elevation.<sup>519</sup> In his latter years he may have been on the bench longer than any judge sitting with him,<sup>520</sup> and by reason of his seniority may (without a new commission) have presided over his court. As a writer, he is the subject of observations in chapter 17, sections 8, 9 and 10.

41. *Of arrangements for Prince Edward to go to Palestine; of parliaments from 1269 to 1272; and of King Henry's death, November 16, 1272. His character.*

"In 1268 Edward took the cross, and two years after left England for Palestine." "On the occasion of the translation of S. Edward, October 13, 1269, he brought together in a great assembly at Westminster, not only the magnates, lay and clerical, but the more powerful men of all the cities and boroughs. After the ceremony the magnates held a parliament, and debated on a grant of a twentieth of moveables to the king." Two or three parliaments were held in 1270 to complete the taxation of 1269 and relieve the king from his vow of crusade by a formal prohibition. In July the Londoners were received into favor, and their forfeited charters recovered. In a parliament held on the 13th of January, 1271, the lands of all the disin-

<sup>517</sup> *Id.*

<sup>518</sup> *Ld. Ellesmere*, in *State Tr.* ii, 693; 3 *Bayle's Dict.*, p. 565, of *Lond. edi.* 1735; 2 *Biogr. Brit.*, p. 537, of *Lond. edi.* 1780; *Best*, C. J., in 1828, in *Rex v. Yarborough*, 2 *Bligh*, N. S., 160; *S. C. (Gifford v. Yarborough)*, 5 *Bingh.*, 163, 15 *Eng. C. L.*

<sup>519</sup> *Biogr. Jurid.*

<sup>520</sup> The suggestion that he may have survived Henry, and died in the reign of Edw. I (2 *Biogr. Brit.*, p. 539, of *Lond. edi.* 1780), is not adopted by Mr. Foss, who observes that "he died about 1267, as in that year his judicial duties evidently terminated." *Biogr. Jurid.*

herited were restored." "The king of the Romans died on the 12th of December the same year."<sup>521</sup>

In the spring of 1271, the king (of England) had been in imminent danger and earnestly required (by letter) the return of Prince Edward.<sup>522</sup>

"Henry III paid several visits to Bury. In 1272 he held a parliament here, and then proceeded to Norwich to punish the authors of a violent insurrection against the prior and monks of that city. He returned to this town" (Bury St. Edmunds) "when he was seized with the disorder which soon afterwards terminated his reign and life."<sup>523</sup>

So it is stated by Thomas Dugdale. That Henry's death was "at Edmundsbury in Suffolk" appears elsewhere.<sup>524</sup> It was on the sixteenth of November, 1272, when he had reigned more than fifty-six years.<sup>525</sup> His burial was "in the abbey of Westminster of his own foundation."<sup>526</sup> There is a monument to his memory by his son.<sup>527</sup>

In section 2, in a note on p. 277, is mention of an observation as to Henry III that "he had scarce half a kingdom in the beginning of his reign." Fuller, who so said, further observes:

"2. He had no part of a kingdom in the middle of his reign, embroiled with war with his barons, beaten in battle, imprisoned, and no king in effect. 3. He had all the kingdom in the end of his reign; for as soon as Prince Edward began to man it, this his son may be accounted his father, by whom he attained a comfortable old age."<sup>528</sup>

Fuller makes other contrasts; saying,

"He was a most pious king, son to a profane father (King John);

<sup>521</sup> 2 Stubbs's Const. Hist., ch. 3, pp. 97, 98; 3 Lingard's Engl., pp. 156, 157. In the same year (1271), March 3, at Viterbo, Richard's son, Henry, was assassinated. *Id.*, p. 156.

<sup>522</sup> *Id.*

<sup>523</sup> 2 Dugdale's Engl. and Wales, tit. Bury St. Edmunds, pp. 327, 328.

<sup>524</sup> Pamphlet printed in 1697, and reprinted in 10 Harl. Miscel., edi. 1810, p. 294; 2 Hume's Engl., N. Y. edi. 1850, p. 61; 3 Collyer's Engl., edi. 1775, pp. 167, 168.

<sup>525</sup> *Id.*, (3 Collyer) p. 167. Lord

Coke says "this king reigned longest of any king since the conquest, or before, that we remember, for he reigned 56 years." 2 Inst., 101.

<sup>526</sup> 2 Fuller's Worthies, edi. 1840, p. 6; 3 Lingard's Engl., ch. 2, p. 158.

<sup>527</sup> "In the tenth year of his reign," Edward "built a superb monument for his father at Westminster, of some valuable jaspar which he had brought out of France." 2 Turner's Engl., ch. 2, p. 43, note 10; citing Trivet, p. 254.

<sup>528</sup> 2 Fuller's Worthies, edi. 1840, p. 5.

a very poor king, brother to a most wealthy, (Richard, king of the Romans); a very weak king, father to a most wise son, Edward the First.<sup>529</sup>

Henry's character is also described by writers of our time.<sup>530</sup> Mr. Stubbs say of him :

"Accomplished, refined, liberal, magnificent; rash, rather than brave, impulsive and ambitious, pious, and in an ordinary sense, virtuous, he was utterly devoid of all elements of greatness. The events of his reign brought out in fatal relief all his faults and weaknesses, making even such good points as he possessed contribute to establish the general conviction of his folly and falseness. Unlike his father, who was incapable of receiving any impression, Henry was so susceptible of impressions that none of them could last long; John's heart was of millstone, Henry's of wax; yet they had in common a certain feminine quality of irresolute pertinacity which it would be a mockery to call elasticity. Both contrived to make inveterate enemies, both had a gift of rash, humorous, unpardonable sarcasm; both were utterly deficient in a sense of truth or justice. Henry had, no doubt, to pay for some of the sins of John; he inherited personal enmities and utterly baseless ideas as to the character of English royalty.<sup>531</sup> He outlived the enmities, and in the hour of his triumph found that his ideas could not be realized. Coming between the worst and the best of our kings, he shares the punishment that his father deserved and the discipline that trained the genius of his son, without himself either unlearning the evil or learning the good."<sup>532</sup>

<sup>529</sup> *Id.*

<sup>530</sup> Stubbs's *Select Charters*, ed. 1870, pp. 307, 308; 3 *Freem. Norm. Conqu.*, ed. 1873, pp. 23, 24; Green's *Short Hist.*, ch. 3, § 5, ed. 1876; *Hist. of Engl. Peop.*, book 3, vol. 1, ch. 2, ed.

1879, p. 266.

<sup>531</sup> For Bracton's view of kingly power, and as to kings being *under the law*, see his work, pp. 5, 34, 107.

<sup>532</sup> 2 Stubbs's *Const. Hist.*, ch. 14, pp. 98, 99, of ed. 1875.

## CHAPTER XVI.

INSTITUTIONS IN THE REIGN OF EDWARD I—1272  
TO 1307.1. *The regency until Edward's return to England.*

"Edward, at the time of his father's death, was far away in the East, but no one questioned his right to succeed."—"His reign began on the day of his father's funeral, when, without waiting for his return, the earl of Gloucester, followed by the barons and prelates, swore to observe the peace of the realm and their fealty to their new lord."<sup>1</sup>—"Three days after the funeral, on the 23d of November, 1272, the royal council put forth a proclamation in the name of the new king, announcing that the kingdom had, by hereditary succession, and by the will and fealty of the 'proceres,' devolved on him, and enjoining the observance of the peace. The question of regency was already settled."<sup>2</sup>—"The great seal of Henry III had been, on the morning after his death, delivered to the archbishop of York,<sup>3</sup> as the first lord of the council, and in his hands, assisted by Roger Mortimer, a baron, and *Robert Burnell*,<sup>4</sup> a royal clerk,

<sup>1</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 102, 103. His "reign was calculated, not from the day of his father's demise, but from that on which he was publicly recognized." 1 Mackintosh's Engl., p. 208, of Phila. edi. 1830. It "began on the 20th November, 1272; on which day the oath of fealty was taken by the barons at Westminster."—"Henceforth (with the single exception of Edward III), to the deposition of Henry VI, the date of the king's accession was the day following the death of his predecessor." Stubbs's Select Charters, pp. 437, 438. "It was not until the reign of Edward IV that the still newer theory was accepted, that the king never dies, that the demise of the crown at once transfers it from the last wearer to the heir, and that

no vacancy, no interruption of the peace, occurs at all." 1 Stubbs's Const. Hist., ch. 14, p. 103.

<sup>2</sup> *Id.*

<sup>3</sup> *Walter Giffard*. He was made constable of the Tower of London, and, according to Philpot, was also treasurer. The date of his death was probably April 25, 1278. He was buried in York Cathedral. Foss's Biogr. Jurid.

<sup>4</sup> Born at Acton-Burnell. In 1265, 50 Hen. III, he is described as clerk or secretary to Edward. He accompanied this prince to the Holy Land, but returned before him. He became canon of Wells, and archdeacon of York, and probably held some office in the Exchequer. *Id.*

the government remained until the king came home. This arrangement, which had been made for the guardianship of the realm, during Edward's absence, as early as 1271, was confirmed in a great assembly of the magnates held at Hilarytide, 1273, at which the oath of allegiance was taken, not only by the prelates and barons, but by a body of representatives, four knights from each county and four citizens from each city."<sup>5</sup> "The regency worked economically and well."<sup>6</sup>

2. *Of breaking the old and making a new seal. Walter de Merton chosen chancellor. Until the king's return he stayed at Westminster, where in banco, cases were heard. When Edward received intelligence of his father's death; when and what he wrote to Chancellor Merton.*

"The old seal was delivered to the archbishop of York, Nov. 17 (Foed. 1, 497); it was broken on the 20th (Liber. de Antt. Leg., p. 153). On the 21st, a meeting of the council was held at the New Temple, and a new seal made, *Walter de Merton* being chancellor."<sup>7</sup>

The selection of Merton as chancellor was by the council;<sup>8</sup> he was directed to stay (until the king's return) at Westminster, where, 'in banco,' all the cases were to be heard that required the action of the king's judges.<sup>9</sup>

In 1273, in the spring, at Capua, intelligence of his father's death was received by Edward,<sup>10</sup> and it is said with greater emotion than was excited by the loss of his infant.<sup>11</sup> On Aug. 9, from 'Mellune super Skeneham,' or 'Mellune on Seine,' Edward wrote 'to his beloved clerk and chancellor':

• "We give you special thanks for the diligence you have applied to our affairs and those of our kingdom, beseeching that what you have so laudably begun you will happily take care to continue, causing justice to be done to every one in matters which belong to your

<sup>5</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 103, 104.

<sup>6</sup> *Id.*, p. 104. And it seems without itinerant justices. *Id.*, p. 271.

<sup>7</sup> 2 Stubbs's Const. Hist., ch. 14, p. 102, note 1.

<sup>8</sup> Foss's Biogr. Jurid. A document on the Close Roll, dated on the 29th, is attested by him in that character. *Id.*

<sup>9</sup> 2 Stubbs's Const. Hist., ch. 14, p. 104.

<sup>10</sup> Green's Hist. of Engl. Peop., book 3, ch. 4, p. 320, of vol. 1.

<sup>11</sup> The king of Sicily expressing surprise, Edward answered, 'a son may be replaced, but the loss of a parent is irremediable.' 2 Turner's Engl., ch. 2, pp. 42, 43, note 9 (citing Wals., p. 3); Miss Strickland's Queens of Engl., vol. 2, pp. 94, 95, of Boston ed. 1857.

office, inducing others also to do the same, not sparing the condition or rank of any person, so that the rigour of justice may control those whom the sense of equity cannot restrain from injuries. Those things which you have rightly done in this matter, we, God willing, will cause to be fully confirmed."<sup>12</sup>

Several letters were addressed to Chancellor Merton by Robert Burnel.<sup>13</sup>

3. *Appellatives of chief justices before and in, and since 1 Edw. I. Mode of creating justices. Title of Chief Justice applied to Gilbert de Preston in 1 Edw. I. He was Chief Justice of the King's Bench. Who, during the regency, were justices of that court and of the Common Pleas; and barons of the Exchequer. Whether during that period there were justices itinerant.*

"Before the reign of King Ed. I, the king's chief justice was sometime called *summus justitiarius*, sometime *præsides justitiarius*, and sometimes *capitalis justitiarius*. In *anno primo*, Ed. I, his chief justice was called *capitalis justitiarius ad placita coram rege tenenda*, and so ever since; and this chief justice is created by writ, and all the rest of the justices of either bench, by letters patents."<sup>14</sup>

"The actual title of chief justice does not seem to have been applied to" *Gilbert de Preston* till the reign of Edward I; then "on his reappointment, he was so called."<sup>15</sup> Mr. Foss quotes a remark of Dugdale<sup>16</sup> which raises the question whether *Gilbert de Preston's* chief justiceship was of the *king's bench*. As to the Common Pleas, Mr. Foss's statement that "he continued to preside there till his death, which occurred in 1274," is in conflict with his statement as to *Roger de Seyton*, that "on the accession of Edward I, he was continued in the common pleas, and was constituted chief justice of that court in Michaelmas of the second year."<sup>17</sup> As to *Ralph*

<sup>12</sup> 1 Campbell's *Lives of the Chancellors*, ch. 10, in note on p. 162, of ed. 1846, pp. 156, 157, of ed. 1874; Foss's *Biogr. Jurid.*; citing 6 Rep. Pub. Rec. App. ii, 89.

<sup>13</sup> Foss's *Biogr. Jurid.*; citing 6 Rep. Pub. Rec., App. ii, 92, 93, 113.

<sup>14</sup> So Lord *Coke* says in 2 Inst., 26.

<sup>15</sup> "In the liberate that grants him livery of his robes." Foss's *Biogr.*

*Jurid.*

<sup>16</sup> "That he is the first whom he has observed to have the title of *capitalis justitiarius* of the court of common pleas." *Id.*

<sup>17</sup> Mr. Foss observes as to *Roger de Seyton*, that, in this second year, he also stands at the head of the justices itinerant; and, further, that "as the last fine acknowledged before him is dated

*de Hengham*, who in the reign of Henry III was a justice of the king's bench, the statement of Mr. Foss<sup>18</sup> shews that he could not have been chief justice until the latter part of 2, or some part of 3 Edw. I.<sup>19</sup> From the accession of Edward I, until between Nov., 1273, and Sept., 1274, unless the office of chief justice of the king's bench, was filled by *Gilbert de Preston*, no one appears in it.

In 1 Edw. I, *Walter de Helynn* is 'one of the justices appointed to hold the pleas of the lord the king.'<sup>20</sup> Three others are *Martin de Littlebere*,<sup>21</sup> *Nicholas de Stapleton*<sup>22</sup> and *William de Sahan*.<sup>23</sup>

*Robert Fulcon*,<sup>24</sup> *Stephen Heym*<sup>25</sup> and *Henry de Monteforti*<sup>26</sup> were, on Edward's accession, continued as justices of the Common Pleas, together with *Roger de Seyton* and *Ralph de Hengham*, before named.

*William de Weyland* was also a justice of the Common Pleas in the first year of this reign.<sup>27</sup>

on the octaves of Trinity, 6 Edw. I, 1278, the period of his death or retirement may be fixed about that time." Biogr. Jurid.

<sup>18</sup> Mr. Foss says: "That, on the accession of Edw. I, he was immediately removed to the Common Pleas, appears from a fine having been levied before him in Nov., 1272; and that his elevation, as chief justice of the King's Bench, must have been between Nov., 1273, and Sept., 1274 (though Dugdale does not name him in that character till 1278), is proved by an entry of pleas, '*coram domino rege et R. de Hengham et sociis suis, justiciis de banco domini regis in Octabis S. Michaelis, anno regno, de secundo, incipiente tertio apud Westm.*' (Abb. Placit. 263.) He held this office until 18 Edw. I. Biogr. Jurid.

<sup>19</sup> *Id.*

<sup>20</sup> In 4 Edw. I, he was paid twenty pounds for his expenses in visiting 'eleven places to expedite the king's business.' Foss's Biogr. Jurid.

<sup>21</sup> *Id.* Dugdale quotes a liberate in his favour in the following year, after

which his name does not occur. *Id.*

<sup>22</sup> *Id.* In 6 Edw. I, a salary of fifty marks yearly was assigned to him in that character. He was summoned to parliament among the judges up to 16 Edw. I; judicial acts of his are recorded until Trin. 17, Edw. I (1289). He died in 1290. *Id.*

<sup>23</sup> He continues for many years to act as a judge of the king's bench; he was in various itinera till 18 Edw. I, when he was removed. *Id.*

<sup>24</sup> Fines were levied before him till about Michaelmas. 2 Edw. I. He is mentioned as a justice itinerant till 15 Edw. I, and probably till then retained his position on the bench. Foss's Biogr. Jurid.

<sup>25</sup> Fines were levied before him from 55 Hen. III, till 3 Edw. I (1274), when he died. *Id.*

<sup>26</sup> An entry on the liberate rolls of 3 Edw. I, names him as a justice on the bench; he died at the end of the next, or beginning of the following year. *Id.*

<sup>27</sup> His name then appearing on the acknowledgment of a fine. *Id.*



*Richard de Stanes*, who, in the reign of Henry III, was a justice of the king's bench, may have retained that place on Edward's accession; but if so, he must have been removed to the Common Pleas in that or the following year.<sup>28</sup> *Thomas de Weyland* was a judge of this court as early as Michaelmas, 2 Edw. I.<sup>29</sup>

It seems probable that *John de Reygate*, who, in the reign of Henry III, was a justicier, continued after Edward's accession, to be a justicier at Westminster.<sup>30</sup>

*Harvey de Boreman* (mentioned in ch. 15, § 35, p. 360) is, in 1 Edw. I, recorded as a baron of the Exchequer.<sup>31</sup> *Roger de la Leye* continued one of the court during the first two years of Edward's reign, and then was a third time raised to the office of chancellor of the Exchequer.<sup>32</sup> *Walter de Hopton*<sup>33</sup> was, April 24, 1274 (2 Edw. I), a baron of the Exchequer.<sup>34</sup> In the same year (2 Edw. I) *Roger de Northwood*<sup>35</sup> was, and about the same year *John St. Valerico* (or *St. Walerico*)<sup>36</sup> was also a baron of the Exchequer. *Philip de Wilughby* is mentioned as being present in Michaelmas, 3 Edw. I (1275), with the title of baron of the exchequer. How long before that term he had the title—whether it was during the regency or not,—does not clearly appear.<sup>37</sup>

<sup>28</sup> Inasmuch as from Michaelmas in the latter, till Feb., 1276, fines were levied before him. He was present at the council held at the following Michaelmas. *Id.*

<sup>29</sup> Some fines having been levied before him at that date. *Id.*

<sup>30</sup> He was, in 3 Edw. I, the third of four justices itinerant into Worcestershire; and, in the next year, the head of four justices of assize. In 6 Edw. I, his name in two commissions of itinera was preceded only by that of the bishop of Worcester. In 7 Edw. I, he headed the circuit into Dorset, Somerset and Wilts; in 12 Edw. I, a writ was addressed to him, and another to hold an assize in Northumberland. (Abb. Placit. 276.) Foss's Biogr. Jurid.

<sup>31</sup> And probably continued so till his death, in 5 Edw. I. *Id.*

<sup>32</sup> As to him see *post*, § 8.

<sup>33</sup> In 1272 he acted as a justice itinerant in Worcestershire. *Id.*

<sup>34</sup> At the end of that, or the beginning of the following year, he was removed into the King's Bench; he is mentioned as a justice itinerant in 6 Edw. I. *Id.*

<sup>35</sup> In 5 Edw. I, he was excused from service in the army against Wales on account of his residence in the Exchequer; he continued in the office till his death, which occurred in 13 Edw. I. *Id.*

<sup>36</sup> He is not mentioned as such after 1276. *Id.*

<sup>37</sup> Soon after Mich. 3, Edw. I (1275), he received the custody of one of the four keys of the royal treasury, his annual fee in the capacity of baron being 40 marks, and in the latter capacity £10. Foss's Biogr. Jurid.

If, during the regency, the regular judges were assisted by any as justices itinerant,<sup>38</sup> it is supposed to have been only in Middlesex,<sup>39</sup> where the judicature was under the eye of the government.<sup>40</sup>

4. *In 1273 of Edward at Bologna; of Accursius and his son Franciscus, who followed Edward to London. In 1274 the coronation. Walter de Merton succeeded as chancellor by Robert Burnel. Justices for assizes beyond the Trent.*

"Edward I, A. D. 1273, came to Bologna on his return from the Holy Land, and took into his service Franciscus, the son of Accursius."<sup>41</sup>

In 1274 the son "was in attendance on Edward at Limoges in May."<sup>42</sup> A short time afterwards he followed the king to London. In that year (1274) Edward was crowned on August 19;<sup>43</sup> on Sept. 2, Franciscus Accursius was sent as a proctor to the French court.<sup>44</sup>

*Walter de Merton*, having been elected bishop of Rochester

<sup>38</sup> 2 Stubbs's Const. Hist., ch. 14, p. 104, and ch. 15, p. 271.

<sup>39</sup> *Solomon de Rochester* (or, as his name is abbreviated, *Solomon de Roff*), a canon of St. Paul's, was selected as a justice itinerant to assist the regular justices in Middlesex in 2 Edw. I (1274). In the following year he acted in Worcestershire. Foss's Biogr. Jurid.

<sup>40</sup> 2 Stubbs's Const. Hist., ch. 14, p. 104.

<sup>41</sup> 1 Spence's Eq., 131. The father and son were both of them remarkable men.

Accursius, a law professor, born in Florence, taught in Bologna, and wrote a *gloss on the whole body of the law*—a work which was found so useful to students, that it eclipsed previous expositions. He died in 1229, aged seventy-eight years. In Bologna, in the church of the Franciscans, is a monument with this short and simple inscription: 'the sepulchre of Accursius, the expounder of the law, and of Francis, his son.' 1 Bayle's Gen. Dict., ed. 1734, p. 150 to 152.

The son was "so highly esteemed by

the citizens of Bologna, that upon hearing he was to follow the king of England," "they commanded him not to leave their city upon pain of having his whole estate confiscated." *Id.*, p. 152. The confiscating it "obliged him to return back, when it was restored to him." *Ibid.* Mr. Stubbs observes: "He is the Francesco mentioned by Dante in the *Inferno*, Canto xv," 2 Const. Hist., ch. 14, p. 107, note 2. <sup>42</sup> *Id.*, p. 107, note 2; citing Foed. i, 511, 512.

<sup>43</sup> The year of Edward's arrival in England, and of his coronation, is erroneously printed 1273, in Miss Strickland's *Queens of Engl.*, vol. 2, p. 195, of Phila. edi. 1857. It is correctly mentioned as 1274, in *Penny Magazine* for 1834, p. 494; Foss's Biogr. Jurid.; and 2 Stubbs's Const. Hist., ch. 14, p. 105.

<sup>44</sup> *Id.*, p. 107, note 2; citing Foed. i, 516, 524. From that time he was employed in many affairs of state; he went twice as ambassador from Edward to France, once in 1278 to Pope Nicholas III. 1 Spence's Eq., p. 131.

about July 20, resigned the chancellorship on September 21.<sup>45</sup> On the same day (Sept. 21) *Robert Burnell* was raised to the chancellorship.

*"Die Veneris in festo Sancti Matth. Apostoli, magnum sigillum regis liberatum fuit Roberto Burnell Archidiacono Eborum apud Windsor & statim inde consignavit bieviam cancellariæ tam de cursu quam de precepto."*<sup>46</sup>

Soon justices were appointed to take assizes beyond the Trent.<sup>47</sup>

5. *Of Edward as a lawgiver; of those who ably assisted him, especially Francis Accursius and Chancellor Burnell. How reforms began which gained for Edward the title of the English Justinian.*

"Edward was by instinct a lawgiver, and he lived in a legal age, the age that had seen Frederick II legislating for Sicily, Lewis IX for France, and Alfonso the Wise, for Castile, the age that witnessed the greatest inroad of written law upon custom and tradition that had occurred since the date of the Capitularies;<sup>48</sup> that saw the growth of great legal schools in the universities, and found in the revived Roman Jurisprudence a treasury of principles, rules and definitions applicable to systems of law which had grown up independently of the Imperial codes. Bracton had read English jurisprudence by the light of the Code and Digest, and the results of his labour were adapted to practical use by Fleta and Britton.<sup>49</sup> Edward had by his side Francesco Accursi, the son of the great Accursi of Bologna, the writer of the glosses on the civil law, a professional legist and

<sup>45</sup> After commencing to erect at Maldon, near Merton, he altered his intention, and proceeded to erect at Oxford the college which bears his name, and removed to it the warden and priests of the former. Merton college is the most ancient establishment of that nature. As to its incorporation there are three charters: the 1st Jan. 7, 1264 (48 Hen. III); the 2d in 1270; and the 3d in 1274 (2 Edw. I). They were consulted as precedents on the foundation of Peterhouse, the earliest college in the sister university.

After presiding over his see little more than three years, Bishop Merton was drowned in crossing the Medway on Octo. 27, 1277, and was buried in Ro-

chester cathedral. In 1598, the marble tomb which covered his remains was taken down, and an elegant monument erected in its place by the warden (Sir Henry Savile) and the fellows of Merton college. Foss's Biogr. Jurid.

<sup>46</sup> 1 Roll's Abr., tit. *Chancellor*, p. 386, pl. 8; citing 2 E. I., *Rot. Patentium*, m. 8.

<sup>47</sup> *William de Northburg* is mentioned as one of the justices appointed in 3 Edw. I (1275) to take such assizes. Foss's Biogr. Jurid.

<sup>48</sup> See Horæ Juridicæ Subsecivæ iii, 2, p. 86 to 88, of Phila. edi. 1808.

<sup>49</sup> Bracton, Britton and Fleta are the subject of particular observations in ch. 17, § 8.

diplomatist;<sup>50</sup> but he found probably in his chancellor, Burnell,<sup>51</sup> and in judges like *Hengham*<sup>52</sup> and *Britton*,<sup>53</sup> practical advisers to whose propositions, based on their knowledge of national custom and experience of national wants, the scientific civilian could add only technical consistency."<sup>54</sup>

*Robert Burnel* was elected bishop of Bath and Wells in January 1275;<sup>55</sup> but he did not retire from the chancellorship; and with his able assistance "began the series of reforms which have gained for Edward the title of the English Justinian."<sup>56</sup>

<sup>50</sup> 2 Stubbs's Const. Hist., ch. 14, p. 107 and p. 110. It is stated by Mr. Stubbs that Francesco Accursi remained for several years in Edward's service. *Id.*, p. 110; that "on Dec. 7, 1276, the sheriff of Oxford was directed to provide him with lodgings in the king's manor house there" (Selden on Fleta, p. 526, from Rot. Pat., 4 Edw. I); that "he was at the Parliament of 1276" (Statutes i, 42); "was sent to Rome in 1278" (Foed. i, 562); that "he swore fealty to Edward at Lyndhurst, Octo. 1, 1281" (Foed. i, 598.) 2 Const. Hist., p. 107, note 2. Mr. Spence says: "A hall at Oxford was appropriated for" the use of him, "called by Edward *Familiaris noster, juris civilis professor*"; "but there is no trace of his having taught in England.

In 1281 he left England; the king gave him a gratuity of 400 marcs sterling, and promised to pay him an annuity of 40 marcs. In 1282 he appears again as a teacher in Bologna. In 1290, five years arrears of his annuity were paid to him by the king's orders. He died in 1293 at the age of sixty eight, and by his will made considerable donations for charitable purposes in England and elsewhere." 1 Spence's Eq., p. 131.

<sup>51</sup> Mr. Foss says of him and the chancellorship: "He filled this office all the remainder of his life, and never, during the eighteen years that it lasted, lost the confidence of his royal master."

Biogr. Jurid.

<sup>52</sup> His reputation as a lawyer had been established. *Id.*

<sup>53</sup> Mr. Foss supposes that *John L. Breton* retired from the bench in 1269. (the year in which he became bishop of Hereford), and that he died in 4 Edw. II. *Id.*

<sup>54</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 107, 108.

<sup>55</sup> And consecrated at Merton in the following April. On the abdication of the archbishopric of Canterbury, by Robert Asewardby in 1278, the monks elected Bishop *Burnel* as his successor, but the pope annulled the appointment, and placed John Peckham in the seat. Foss's Biogr. Jurid. It may be observed that the name which Mr. Stubbs prints Burnell is by Mr. Foss printed Burnel.

<sup>56</sup> "Absurdly enough," Lord Campbell says: "As the Roman emperor merely caused a compilation to be made of existing laws, whereas the object now was to correct abuses, to supply defects, and to remodel the administration of justice." 1 Lives of the Chancellors, ch. 10, p. 165, of edi. 1846, p. 159, of edi. 1874. But "a title" (says Mr. Stubbs), "which if it be meant to denote the importance and prominence of his" (Edward's) "legislation and the dignity of his position in legal history, no Englishman will dispute." 2 Const. Hist., ch. 14, p. 105.

"In the judicial reforms to which the earlier part of his reign was devoted, we see, if not an 'English Justinian,' at any rate a clear-sighted man of business, developing, reforming, bringing into distinct shape, the institutions of his predecessors."<sup>57</sup>

6. *Of Edward's first parliament; its work, the statute of Westminster the first (1275), almost a code by itself. Especially of chapters 4, 5, 25, 26, 29, 30 and 46; observations thereon by St. German, Lord Coke and Mr. Stubbs.*

The parliament of which Pinkerton wrote in his 'Iconographia Scotica' <sup>58</sup> deserves attention.

This parliament "met on the 22d of April, 1275. It was a remarkable assembly, a great and general parliament, and is described as containing not only the prelates and barons, but 'the community of the land thereto summoned'; the king legislates, '*par sun conseil*,' and with the common consent of the persons summoned. The statute of Westminster the First was the work of the session. This act is almost a code by itself; it contains fifty-one clauses."<sup>59</sup> Chapters 4, 5, 25, 26, 29, 30 and 46 are as follows:

4. "Concerning wrecks of the sea, it is agreed that where a man, a dog or a cat escape quick out of the ship, that such ship nor barge, nor anything within them, shall be adjudged wreck; but the goods shall be saved and kept by view of the sheriff, coroner, or the king's bailiff, and delivered into the hands of such as are of the crown where the goods were found. So that if any sue for those goods, and after prove that they were his, or perished in his keeping, within a year and a day, they shall be restored to him without delay; and if not, they shall remain to the king, and be seized by the sheriffs, coroners and bailiffs, and shall be delivered to them of the town, which shall answer before the justices, of the wreck belonging to the king. And where wreck belongeth to another than to the king, he shall have it in like manner. And he that otherwise doth, and thereof be attainted, shall be awarded to prison, and make fine at the king's will, and shall yield damages also. And if a bailiff do it, and it be disallowed by the lord, and the lord will not pretend any title thereunto,

<sup>57</sup> Green's Short Hist., ch. 14, § 2, p. 192.

<sup>58</sup> Published in 1797, and in the Penny Magazine for 1832, pp. 493, 494.

<sup>59</sup> Select Charters, p. 438 to 441; 2 Stubbs's Const. Hist., ch. 14, pp. 108, 109; Green's Hist. of Engl. Peop., book 3, ch. 4, p. 321, of vol. 1. According to the preamble thereof, "these be the acts of King Edward, son to King Henry,

made at Westminster at his first parliament general, after his coronation on the Monday of Easter Utas, the third year of his reign, by his council and by the assent of archbishops, bishops, abbots, priors, earls, barons, and all the commonalty of the realm, being thither summoned." 1 Stat. of the Realm, p. 26; 2 Inst., p. 157.

the bailiff shall answer if he have whereof; and if he have not whereof, the lord shall deliver his bailiffs body to the king."<sup>60</sup>

5. "And because elections ought to be free, the king commandeth upon great forfeiture, that no man, by force of arms, nor by malice or menacing, shall disturb any to make free election."<sup>61</sup>

25. "No officer of the king,<sup>62</sup> by themselves, nor by other, shall maintain pleas, suits or matters hanging in the king's courts, for lands, tenements or other things, for to have part or profit thereof by covenant made between them; and he that doth shall be punished at the king's pleasure."<sup>63</sup>

26. "And that *no sheriff nor other the king's officer take any reward to do his office*, but shall be paid of that which they take of the king; and he that so doth shall yield twice as much, and shall be punished at the king's pleasure."<sup>64</sup>

<sup>60</sup> 1 Stat. of the Realm, 27; 2 Inst., 166. As to whether Richard dealt with the laws of Oleron, or improved maritime law, see ch. 12, § 15, p. 232. As to "the common law of wreck of the sea," and the operation of this statute of Westm. i, see *Constable's case*, 5 Rep. 108 b; 2 Inst., 166, *et seq.*; Doct. & Stud., ch. 49 and 51, pp. 318 and 323, of edi. 1721.

<sup>61</sup> 1 Stat. of the Realm, 28. "There were two mischiefs before the making of this statute: 1. For that elections were not *duly* made. 2. That elections were not *freely* made. And both these were against the ancient maxim of the law—'*Fiant electiones rite et libere sine interruptione aliqua*'; and again, '*Electio libera est*'"—"In the irregular reign of Hen. III, the electors had neither their free nor their due elections; for sometimes by force, sometimes by menaces, and sometimes by malice, the electors were framed and wrought to make election of men unworthy, or not eligible, so as their election was neither due nor free. This act briefly rehearseth the old rule of the common law, (for that elections ought to be free) wherein both the said points are included: 1. It must be a due election; and 2. It must be a free election." And the act "extends to all elections, as well by those that at the making of this act

had power to make them, as by those whose power was raised or created since this act." 2 Inst., 168, 169.

<sup>62</sup> *Nul minister le roi* extends to the judges of the realm as well as to them that have ministerial offices. 2 Inst., 207. For that the king's ministers or officers within his courts were in place to do more mischief therein to the subverting of justice and truth than others: therefore this act provideth only against the king's ministers and officers of his courts. *Id.*, 209.

<sup>63</sup> 1 Stat. of the Realm, 33; 2 Inst., 207.

<sup>64</sup> 1 Stat. of the Realm, 33; 2 Inst., 209. "This statute is made in affirmance of a fundamental maxim of the common law, which is *non capiant vice-comites, vel alii ministri regis præmium, vel mercedem, vel aliquid pro officio suo faciendo, sed tantum de feodis suis à domino rege sint contenti*."—"The alteration of any of those maxims of the common law is most dangerous."—"While sheriffs, escheators, coroners and other ministers of the king, whose offices any way did concern the administration or execution of justice, or the good of the common weal, could take no fee at all for doing their office, but of the king; then had they no colour to exact any thing of the subject, who knew that they ought to take nothing of them. But when some acts of parliament, changing the rule of

29. "If any serjeant, pleader or other, do any manner of deceit, or collusion in the king's court, or consent unto it, in deceit of the court, or to beguile the court, or the party, and thereof be attainted, he shall be imprisoned for a year and a day, and from thenceforth shall not be heard to plead in that court for any man; and if he be no pleader, he shall be imprisoned in like manner by the space of a year and a day at least; and if the trespass require greater punishment, it shall be at the king's pleasure."<sup>65</sup>

30. "And inasmuch as many complain themselves of officers, cryers of fee, and the marshals of justices in eyre, taking money wrongfully of such as recover seisin of land, or of them that attain their suits, and of fines levied, and of jurors, towns, prisoners, and of others attached upon pleas of the crown, otherwise than they ought to do, in divers manners; and forasmuch as there is a greater number of them than there ought to be,<sup>66</sup> whereby the people are sore grieved; the king commandeth that such things be no more done from henceforth; and if any officer of fee doth it, his office shall be taken into the king's hand; and if any of the justices' marshals do it, they shall be grievously punished at the king's pleasure; and as well the one as the other shall pay unto the complainants the triple value of that they have received in such manner."

46. "It is provided also, and commanded by the king, that the justices of the king's bench at Westminster, from henceforth shall decide all pleas determinable at one day before any matter be arranged or plea commenced the day following, saving that their essoins shall be entered, judged and allowed; yet by reason hereof let none presume to absent himself at the day to him limited."<sup>67</sup>

the common law, gave to the said ministers of the king fees, in some particular cases, to be taken of the subject, whereas before, without any taking at all their office was done, now no office at all was done without taking: but at this day they can take no more for doing their office than have been since this act allowed to them by authority of parliament." 2 Inst., 74, 209, 210. "By this act the plaintiff shall recover his double damages, and besides they shall be punished at the will of the king, that is, by the king's justices, before whom the cause depends." *Id.*, 210.

<sup>65</sup> 1 Stat. of the Realm, 34; 2 Inst., 213; *Mitchell's case*, 2 Atk., 173; *Butler v. Freeman*, 1 Amb., 304.

<sup>66</sup> 1 Stat. of the Realm, p. 34; 2 Inst., 218. "Hereby it appeareth that the over great number of these virgers, criers

and marshals was a means of extortion or grievance of the people; and so it is in all other cases, of what profession or place soever. *Multitudo imperatorum perdidit curiam*; besides it taketh away the estimation and credit of the same." 2 Inst. 219.

<sup>67</sup> 1 Stat. of the Realm, 38; 2 Inst., 255. "The mischief before this statute was, in respect of preposterous or disorderly hearing of causes; for many times the judges of the king's bench and of the court of common pleas, would by importunacy of great men and others in the irregular time of H. 3, put off matters to be heard at one day until another, and at that time hear some other matters appointed to be heard on a day following, whereby the parties whose causes were then disappointed were not only delayed and put to further charges,

To a considerable extent the statute of Westm. I remains in force in England, and is in 'The Statutes Revised.'<sup>68</sup>

"Its language now recalls that of Canute or Alfred, now anticipates that of our own day: on the one hand common right is to be done to all, as well poor as rich, without respect of persons; on the other, elections are to be free, and no man is, by force, malice or menace, to disturb them. The spirit of the Great Charter is not less discernible: excessive amercements, abuses of wardship, irregular demands for feudal aids are forbidden in the same words, or by amending enactments."<sup>69</sup>

7. *Method of proceeding in parliament in 4 Edw. I. Then the Lords and Commons sat together. Statutes enacted at a session attended by Francesco Accursi, the Bolognese lawyer.*

In noticing legislation of 4 Edw. I (1275-6), Lord Coke says:

"Here you may observe the ancient method of proceeding in parliament for passing of bills; first, a select committee of certain bishops, barons, and some of the commons, with the judges' assistants (who after are expressly named), expressed here under these words, *et aliorum de consilio regis* (for at this time the lords and commons sate

but many times when their cause came to be heard, either were disappointed of their counsel which they had instructed, or the day appointed not being come, had no counsel instructed at all; and besides, where witnesses were requisite, they many times failed of them. This law, therefore, is made to remedy these preposterous and disorderly proceedings, and to give judges a just cause of denial of any such requests, though never so powerfully or importunately made."—"This statute being made *in affirmance of common right* doth extend to the court of chancery, court of exchequer, and to all other courts of justice, for that all are within the same mischief, and therefore ought to be within the same remedy."—"Judicis officium est opus dici in die ipso perficere." 2 Inst., 256.

<sup>68</sup> Ed. 1870, vol. 1, p. 15 to 25.

<sup>69</sup> 2 Stubbs's Const. Hist., ch. 14, p. 109. Mr. Stubbs further observes, that "the inquest system of Hen. II, the

law of wreck, and the institution of coroners, measures of Richard and his ministers, come under review as well as the Provisions of Oxford and the Statute of Marlborough." He tells us that "this great measure was, however, not granted without its price. A grant of custom on wool, woolfells and leather, was made in the same parliament (Select Charters, pp. 441, 442); and in a similar assembly held on the 13th of October, a fifteenth of temporal moveables was bestowed for the relief of the royal necessities." He states that "measures for enforcing and regulating the collection of this tax were taken in an Easter parliament in 1276, on the occasion of a general pardon extended to all the disinherited of the late reign, and a recognition of the validity of the charters." 2 Stubbs, p. 109; Green's Hist. of Engl. Peop., book 3, ch. 4, p. 321 and 324 of vol. 1.



together), and after the committee of both houses had resolved here-upon, then to report it to the whole council."<sup>70</sup>

In this year (1275-6) was enacted a statute as to that ancient office of the crown which has its derivation from *corona*—the office of the coroner (*coronatoris*);<sup>71</sup> and also '*Statutum de Bigamis*,'<sup>72</sup> and 'a statute concerning justices being assigned, called Rageman,'<sup>73</sup> which ordered a visitation by the justices to hear complaints for trespass committed within the last 25 years. This session is marked by the attendance of Francesco Accursi, the Bolognese lawyer, mentioned in previous sections.<sup>74</sup>

8. *From 4 Edw. I, until 1278; of the Chief Justices, and their associates; and of justices itinerant, barons of the Exchequer and chancellor of the Exchequer.*

In speaking of the parliament of 4 Edw. I, *Ld. Coke* states that 'Sir *Ralph de Hengham* was chief justice of the king's bench, and Sir *Thomas de Weyland* chief justice of the court of common pleas at this parliament.'<sup>75</sup> This statement, though as to the former it may be true, seems inaccurate as to the latter. For in 4 Edw. I, *Roger de Seyton* was still presiding over the Common Pleas.<sup>76</sup>

Of the judges mentioned in § 3, p. 380, *Walter de Helynn* was in the King's Bench until 6 Edw. I, when he was removed to the Common Pleas; *Nicholas de Stapleton* and *William de Sahan* continued in the King's Bench for many years. *Walter de Wymburn* was appointed in 4 Edw. I (1276) a judge of the King's Bench, and was acting in this character as late as October, 1288.<sup>77</sup>

Of other justices mentioned in § 3, p. 380, there may have been on

<sup>70</sup> 2 Inst., 267.

<sup>71</sup> The Statute of Westm. I, prescribed (in ch. 10) 'who shall be chosen coroners,' and 'their duty.' 2 Inst., 174; 1 Stat. of the Realm, p. 29. The statute mentioned in the text is in the same volume, pp. 40, 41, and in the "Statutes Revised," vol. 1, p. 25 to 28, of ed. 1870. In connection with it there may be reference to Greenwood on

the coroner's office.

<sup>72</sup> 2 Inst. 267; 1 Stat. of the Realm, pp. 42, 43.

<sup>73</sup> *Id.*, p. 44; 2 Stubbs's Const. Hist., ch. 14, pp. 109, 110, and p. 271.

<sup>74</sup> § 4, p. 382, and § 5, p. 833.

<sup>75</sup> 2 Inst., 267.

<sup>76</sup> See § 3, p. 379.

<sup>77</sup> Foss's Biogr. Jurid.

the bench of the Common Pleas in 4 Edw. I, *Robert Fulcon* and *Henry de Monteforti*, or *Richard de Stanes*, as well as *Thomas de Weyland*. But the place of one or more of the three first was probably vacant in 3 or 4 Edw. I. For *John de Lovetot*<sup>78</sup> was raised to this bench in 3 Edw. I (1275) and continued on it till 1289.<sup>79</sup> *Ralph de Freningham*<sup>80</sup> was a justice of this court from 3 to 6 Edw. I (1275-8).<sup>81</sup> *Roger de Leicester*<sup>82</sup> was one of its justices from Trin. 4 Edw. I (1276), till Mich., 1289.<sup>83</sup> *William de Brompton* (whose name is sometimes spelt *Burnton* and *Burton*) was of this court from 1278, (6 Edw. I) till Mich., 17 Edw. I.<sup>84</sup> In 6 Edw. I (1278), *Roger de Seyton* being dead, or having retired from the office of chief justice, *Thomas de Weyland* was promoted to that office.<sup>85</sup>

*Thomas de Sodington* (or *Sadington*, or *Suddington*) was a clergyman, and probably one of the officers of the court, before he became justice itinerant. His first appointment to that duty was in 4 Edw. I (1276), when he acted in the city and Tower of London. From that time he was employed in various parts of the kingdom till 17 Edw. I.<sup>86</sup>

*Geoffrey de Leuknore* (mentioned in ch. 15, § 28, p. 339), *Roger Loveday* and *Geoffrey de Newbald* were appointed in 4 Edw. I (1276), Nov. 2, justices to hold pleas in the liberties of the priory of Dunstable; the two first were justices itinerant in 6 Edw. I; the second named (*Roger Loveday*) continued to act in that character till 14 Edw. I.<sup>87</sup>

<sup>78</sup> Of the noble family of that name, lords of Wirksope, in Nottinghamshire. John was son of Oliver de Lovetot, of Carcelston, in that county, and Alicia, his wife. *Id.* <sup>79</sup>*Id.*

<sup>80</sup> Appointed in 1270 to a canonry of St. Paul's. *Id.*

<sup>81</sup> He died in 15 Edw. I. A descendant of his (residing at East Farleigh) was sheriff of Kent in 17 Edw. II. *Id.*

<sup>82</sup> Son of Sir Nicholas de Leicester (who possessed large estates in Cheshire) by Margaret, daughter of Geoffrey Dut-

ton, and widow of Robert de Denbigh. *Id.* <sup>83</sup>*Id.*

<sup>84</sup>*Id.*

<sup>85</sup>*Id.*

<sup>86</sup> He was on an embassy to the Earl of Holland in 12 Edw. I, and a party to the contract for marriage of the earl's son John, with the king's daughter Elizabeth (*N. Foedera* i, 645, 658, 661). *Foss's Biogr. Jurid.*

<sup>87</sup> He was one of eight judges selected, in 8 Edw. I, to enquire as to services due from tenants of Tavistock manor; and was, in 12 Edw. I, a commissioner of enquiry into the state of walls,

*Solomon de Rochester*, or de Roff, (mentioned in § 3, p. 382 n.) is called by Dugdale, one of the justices of assize in 1276; but (Mr. Foss observes) "there was not at that time any distinction between the two classes; and two years afterwards his name again appears among the justices itinerant, and so continues till 1287."<sup>88</sup>

*Godfrey Giffard*, bishop of Worcester, and late chancellor, (mentioned in ch. 15, § 38, p. 367,) was in 6 Edw. I (1278) at the head of the justices itinerant for the counties of Hereford, Hertford and Kent.<sup>89</sup>

*Richard de Ware*, abbot of Westminster, was at the head of, and *John de Vaux* was upon, the commission of, justices itinerant, into the three northern counties in 6 Edw. I (1278).<sup>90</sup>

*William de Northburg* (mentioned in § 5, p. 383 n.) was in 6 and 7 Edw. I, a justice itinerant in several counties.<sup>91</sup>

*John de Cobbeham* (mentioned in ch. 15, § 40) was in 4 Edw. I, a baron of the Exchequer.<sup>92</sup>

*Roger de la Leye* (mentioned in § 3, p. 381) is spoken of in 1276

ditches, sewers and bridges in Heyland, in Lincolnshire, and the damage from an inundation there. His property was at Wytheresfield, in Suffolk. He died in 15 Edw. I. His widow, Sibilla, married William de Ormesby, the judge. *Id.*

<sup>88</sup> Foss's Biogr. Jurid.

<sup>89</sup> He died Jan. 26, 1301. Mr. Foss (citing Chambers's Illustr. Worcester-shire) says: "He was a man of high spirit, overbearing and litigious, and made his visitations burthensome by the extent of his retinue, which amounted to near a hundred horse." Biogr. Jurid.

<sup>90</sup> *Richard de Ware* was, in 1261, on an embassy to France; and, in 1278, on an embassy to John, duke of Brabant, to negotiate a marriage between that prince's eldest son and Margaret, the king's daughter. *Id.*

*John de Vaux* was grandson of

Oliver, and son of Robert de Vaux. In 49 Hen. III, he had the sheriffalty of Norfolk and Suffolk, and a grant of houses, '*prope Garther*,' in London. Under Edw. I, he was a justice itinerant, not only in 6 Edw. I (1278), to visit the northern counties, but, up to 14 Edw. I, in various other counties. *Id.*

<sup>91</sup> And again in that character at Lancaster, in 23 Edw. I. Foss's Biogr. Jurid.

<sup>92</sup> June 6, 1276, with a salary of 40 marks *per annum*. Records show that he continued in the office during the remainder of his life. In the Year Book of Hil. 28, Edw. I, it appears that he was authorized to stay at home at his pleasure, and to come to the Exchequer and remain there when he would. This license was no doubt granted in consequence of his bodily infirmity; he died in the same year. *Id.*

as '*nuper cancellarius*.<sup>93</sup> To the office of chancellor of the Exchequer *Goeffrey de Newbald* (mentioned in this section, p. 390) was raised Aug. 22, 1277.<sup>94</sup>

9. *John de Kirkeby substituted Robert Burnel the chancellor, during his temporary absence Feb., 1278, and on other occasions. As to requiring the chancellor to be in a certain place.*

*John de Kirkeby* (mentioned in ch. 15, § 38, p. 368) was named as substitute for *Robert Burnel* the chancellor, when he went abroad Feb. 11, 1278 (6 Edw. I); and on several other occasions during that chancellor's temporary absences—viz: May 25, 1279; Feb. 20, 1281; Feb. 13, 1282; and March 1, 1283. "As he was left to expedite the business of the chancery in the mean time," Mr. Foss considers it "manifest that he was cognizant of the duties of the office, and most probably that he was the senior clerk in the chancery, then a place of high importance."<sup>95</sup>

"In 1230, after Epiphany, the king went to hunt in the new forest, but the chancellor returned to London" (it is said) "as to a *certain place* where all who sought writs, and were prosecuting their rights, might find a certain remedy. But (Mr. Stubbs observes) "if this were so, the plan was found impracticable for the present; Edward could not do without his chancellor, who accompanied him in his long visit to France."<sup>96</sup>

10. *Of the expedients, in 1278, for raising money; the writ in June 'for distraint of knighthood;' the statute in August of 'quo warranto;' proceedings under it; jealousy manifested by the barons, particularly the Earl of Warenne; also of the statute of Gloucester; Lord Coke's observations thereon.*

In 1278, by the writ of June 26, 'for distraint of knighthood' the king sought to raise money as well as to increase the knightly body; the king's 'wanting money' induced legislation in August.<sup>97</sup> Imme-

<sup>93</sup> He was appointed about that time archdeacon of Essex, and raised Octo. 25, 1283, to the deanery of London. He died Aug. 18, 1285. *Id.*

<sup>94</sup> He is recorded as attending the court of Exchequer as late as 9 Edw. I. *Id.*

<sup>95</sup> 1 Roll. Abr., tit. *Chancellor*, p. 385,

No. 5; Foss's Biogr. Jurid.

<sup>96</sup> 2 Stubbs's Const. Hist., ch. 15, p. 268. In 28 Edw. I (1300), in '*Articuli super chartas*,' ch. 5 (as may be seen, *post*, in § 23), "the king wills that the chancellor and the justices of his bench shall follow him."

<sup>97</sup> 2 Inst., 280.

diately after his arrival, in 1274, there had been a commission of enquiry whereof results were recorded in the '*Rotuli Hundredorum*,' or Hundred Rolls. Thereon was based the action in August, 6 Edw. I (1278), of the parliament holden at Gloucester, bordering upon Wales,<sup>98</sup> which passed the statute of *quo warranto*, and also the statute known as the statute of Gloucester;<sup>99</sup> great part of which remains in force in England, and is in 'The Statutes Revised.'<sup>100</sup>

"In pursuance of the main purpose of the act, proceedings were directed under which the itinerant justices were to enquire by what warrant the franchises reported by these commissioners were held; and a writ of '*quo warranto*' was issued in each case. This proceeding was viewed with great jealousy by those barons who retained the old feudal spirit, and who were as suspicious as their forefathers had been of an attempt to limit the exercise of their local rights. The earl of Warenne, in particular, resented the enquiry. When he was called before the justices, he produced an old rusty sword, and cried, 'See, my lords, here is my warrant. My ancestors came with William, the bastard, and conquered their lands with the sword; with the sword will I defend them against any one who wishes to usurp them. For the king did not conquer and subdue the land by himself, but our forefathers were with him as partners and helpers.'<sup>101</sup>

<sup>98</sup> "For the better preservation of peace in Wales; Lluellin, prince of Wales, and the Welshmen being a little before this parliament, brought to quietness." 2 Inst. 277. Now "Edward contented himself with adding to the English dominions the counties as far as Conway, and with providing that the title of Prince of Wales should cease at Llewellyn's death."—"Eleanor, a daughter of Earl Simon, of Montfort, whom he had sought as his wife, but who had been arrested on her way to him, was wedded to the Prince" in 1278. 'Green's Short Hist., ch. 4, § 1, pp. 189, 190; 2 Stubbs's Const. Hist., ch. 14, p. 110, note 1. This marriage was at Worcester; the prince and princess of Wales afterwards accompanied the king and queen to Westminster. Miss Strickland's Queens of England, vol. 2, p. 97, of Phila. edi. 1857.

<sup>99</sup> 1 Stat. of the Realm, 45 to 50, also 52; 2 Inst., 277, *et seq.*

<sup>100</sup> Edi. 1870, vol. 1, p. 29 to 32.

<sup>101</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 110, 111. "Another time when questioned as to the authority under which he claimed free warren in Wurth, and other lands in Sussex, he pleaded that all his ancestors had adhered to the kings of England; that when Normandy was lost, where they were earls, they also lost their lands there, because they would not join the king of France against King John; that, in compensation, they had grants of other lands in England, with the privilege of free warren over them, in regard of their surname *de Warenne*; and his plea was allowed." He died Sept. 27, 1304, and was buried in the abbey of Lewes. Foss's Biogr. Jurid.

The '*quo warranto*' act seems to

## Chapter 8 of the Statute of Gloucester is as follows:

"That sheriffs shall plead pleas of trespass in their counties,<sup>102</sup> as they have been accustomed to be pleaded. And that none from henceforth shall have writs of trespass<sup>103</sup> before justices, unless he swear by his faith that the goods taken away were worth 40 shillings<sup>104</sup> at the least. And if he complain of beating, he shall answer by his faith that his plaint is true. Touching wounds and maims<sup>105</sup> a man shall have his writ as before hath been used; and it is agreed that the defendants in such pleas may make their attorneys,<sup>106</sup> where

have been enforced with rigour. 2 Const. Hist., ch. 14, p. 111. Complaint of the number of 'writs of *quo warranto*,' caused a new statute (18 Edw. I) to remedy the mischief. 2 Stat. of the Realm, 494, 495; 2 Inst., 494, *et seq.*

<sup>102</sup> "This is put for an example, for the hundred court, and the court baron, being no courts of record, are also within this law." 2 Inst., 311.

<sup>103</sup> "Writs of trespass are here put but for an example, for debt, detinue, covenant and the like; but if the trespass be *vi et armis*, where the king upon the conviction of the defendant shall have a fine, then the sheriff in his county cannot hold plea of it, for no court can assess a fine but a court of record, because a *capias* to take the body is incident to it, for it is a rule of law, '*Quod placita de transgressionem contra pacem regis in regno Angliæ vi et armis factis secundum legem et consuetudinem Angliæ sine brevi regis placitare non debent.*' Neither shall he hold plea of trespass for taking away of charters concerning inheritance or freehold, for it is a maxim in law, '*Quod placita conierment chart' seu script' liberum tenementum tangentia in aliquibus curiis quæ recordum non habent secundum legem et consuetudinem regni Angliæ sine brevi regis placitare non debent.*'" 2 Inst., 311.

<sup>104</sup> "For as the inferior courts, which are not of record regularly, cannot hold plea of debt, &c., or damages, but under 40s., so the superior courts, that are of

record, cannot hold plea of debt, &c., or damages, regularly, unless the sum amount to 40s., or above."—"As the superior courts ought not to encroach upon the inferior, so the inferior courts ought not to defraud the superior courts of those causes that belong to them. For example, if in the county court, or other inferior courts, they shall divide a debt of £20 into several plaints under 40s., in this case the defendant may plead the same to the jurisdiction of the court, or may have a prohibition to stay that indirect suit."—"The said words, *vailent 40s. al. meins*, have received this construction, that the same must so appear to be of value in the plaintiff's count, for it is not sufficient that it appears by verdict that the sum is under 40s. For example, if the plaintiff count in trespass, debt, detinue, covenant, &c., to the damage of 40s., and the jury find the damages under 40s., yet the plaintiff shall have no judgment, albeit, in truth, the cause *de jure* belonged to the inferior courts." 2 Inst., 312.

<sup>105</sup> "Hereby, it appeareth that the county court hath no jurisdiction to hold plea *de plagis et maihemis*, of wounds and maims, but those pleas must be determined in the king's higher courts, but of battery (without wounding or maiming) this act proveth that the county court hath jurisdiction." 2 Inst., 312.

<sup>106</sup> "In ancient manuscripts the former branch, viz: *des playes et des mayhems*, &c., is a distinct chapter by itself, and this branch is parcel of that chapter, so

appeal lieth not; so that if they be attainted being absent, then the sheriff shall be commanded to take them,<sup>107</sup> and shall have like pain as they should have had, if they had been present at the judgment given. And if the plaintiffs from henceforth in such tresspasses cause themselves to be essoined after the first appearance, day shall be given them unto the coming of the justices in eyre, and the defendants in the meantime shall be in peace. In such pleas and other, whereas attachments and distresses do lie if the defendant esoin himself of the king's service, and do not bring his warrant at the day given him by the esoin, he shall recompence the plaintiff damages for his journey 20 shillings or more, after the discretion of the justices, and shall be grievously amerced unto the king." 2 Inst. 310, 311.

*11. Justices in 6, 7 and 8 Edw. I; their compensation.*

"In 1278; at Gloucester, the king, in council, re-nominated a chief justice and two others '*justitiæ de Banco ad placita regis*'; a chief and four others, '*justitiæ de Banco Westmonasterii*'; six justices in eyre for the north, and six for the south; with fixed sums *nomine fædi ad sustentationem*, varying from sixty to forty marks."<sup>108</sup>

*Richard de Boyland*<sup>109</sup> was, in 7 Edw. I (1279), a justice itinerant in Dorsetshire, Somersetshire and Wiltshire; and afterwards in various other counties until 1289.<sup>110</sup>

*Alan de Walkingham*<sup>111</sup> was, in 8 Edw. I (1280) appointed one of the justices to take assizes in different counties.<sup>112</sup>

*Roger de Clifford* (mentioned in ch. 15, § 40) was, in the same

as these words *en tiels pleas*, such pleas must be referred to pleas of trespass, battery, wounding and maiming, unless it be in appeal of maim. 2 Inst., 313.

<sup>107</sup> "Albeit, this statute speaketh only of the execution of the body, yet might he have had, at the making of this act, a *fieri fac*; and afterwards by the statute of W. 2, c. 45, he may have an *elegit*: for this branch, being in the affirmative, doth not restrain the plaintiff to take any other remedy." 2 Inst., 313.

<sup>108</sup> Parl. Writs i, 382; cited in 2 Stubbs's Const. Hist., ch. 15, p. 267, note 1.

<sup>109</sup> Son of *Roger de Boyland*, and Alice, his wife. Richard was a success-

ful lawyer, when, in 1268, he purchased part of the manor of Brisingham, in Norfolk (afterwards called by his name), and in part payment gave some acres which he previously held in Pulham in that county. Foss's Biogr. Jurid.

<sup>110</sup> *Id.*

<sup>111</sup> Whose family had considerable possessions in Yorkshire. He was probably son of John de Walkingham; he pursued the legal profession. *Id.*

<sup>112</sup> In the next year he acted as the king's advocate or local attorney-general in pleas before justices itinerant in Yorkshire; in 10 Edw. I, he was added to the commission of justices itinerant in Cornwall. He died in 12 Edw. I. *Id.*

year, at the head of the justices itinerant visiting Rutland and five other counties.<sup>113</sup>

12. *Treasurer of the Exchequer and chancellor of the Exchequer in and after 1281. They were of the Curia Regis et Concilii, whose judgment in 9 and 10 E. I, is pronounced in the House of Lords in 1844, 'of the highest weight.' Of John de Kirkeby, the treasurer, in 12 Edw. I (1284); his doing 'quale de jure et gratia Cancellariæ' ought to be done.*

*Richard de Ware*, abbot of Westminster (mentioned in § 8, p. 391), was, in 1281, treasurer of the Exchequer, and held this office when he died, Dec. 2, 1283.<sup>114</sup>

*Philip de Wilughby* (mentioned in § 3, p. 381) was raised to the office of chancellor of the Exchequer about 1283, and filled it till his death, in 1305. During this period he frequently acted as *locum tenens* of the treasurer.<sup>115</sup>

*John de Kirkeby* (mentioned in ch. 15, § 38, p. 368, and in this chapter, § 9, p. 392) filled the office of treasurer from January 6, 1284, until his death, March 26, 1290.<sup>116</sup>

"In those days, though the chancellor and treasurer were, for the most part, men of the church, yet they were expert and learned

<sup>113</sup> He had, at various times, custody of the castles of Marlborough, Ludgershall, Gloucester (with its sheriffalty) and Erdesley, in Herefordshire. His severity in the office of justice of North Wales, to which he was appointed in 8 Edw. I, is said to have induced David, son of the Prince of Wales, to break out into open hostility. Roger was taken prisoner in 10 Edw. I, and his son (Roger, junior), was slain Nov. 6, 1282. The father died in 14 Edw. I (1286). *Id.*

<sup>114</sup> During the twenty-five years that he was abbot, he procured many immunities for the abbey, and adorned it with the mosaic pavement before the high altar, the rich materials of which he brought from Rome. Over his tomb was placed this epitaph:

*Abbas Richardus de Ware, qui requiescat Hic, portat lapides, quos huc portavit ab urbe. Id.*

<sup>115</sup> And was so indefatigable in his attention to official duties, that, in 30 Edw. I, the king, taking into consideration the length of his service, gave him a license to attend at the Exchequer when it suited his leisure and convenience. Like most of the officers of the court, he was of the clerical profession; he obtained as his reward a canonry of St. Paul's, from which he was advanced in June, 1288, to the deanery of Lincoln. At his death he was possessed of the manor of Byflete, in Kent, and lands in Notts and Middlesex. Foss's Biogr. Jurid.

<sup>116</sup> He was elected bishop of Ely July 26, 1286, and was buried in his own cathedral. *Id.*



in the laws of the realm.”<sup>117</sup> Of the case in 9 and 10 E. I, *coram rege* (Rot. 24, *Ebor.*), whereof a note (from Lord *Hale's* manuscripts) in Co. Lit. 33<sup>a</sup><sup>118</sup> was cited before the House of Lords in 1844, *Tindal*, C. J., said:

“The *Curia Regis et Concillii* before which the reversal took place, appears, according to the researches of antiquarians, to have been, in the time of Edward I, a tribunal of appeal in cases of difficulty, and to have consisted at that time of the Chancellor, the Treasurer and Barons of the Exchequer, the judges of either bench, and other functionaries; which court of the *Concilium Regis* was perfectly distinct from the *Commune Concilium Regni*, the probable original of the English parliament.”<sup>119</sup>

Mr. *Spence* states that “in the 12 Edw. I, a writ directed by the king to *J. de Kirkeby*, *clerico suo*, commands him to do ‘*quale de jure et gratia cancellariæ*,’ ought to be done.”<sup>120</sup>

13. *Growth of the representative system in church councils. Of the ecclesiastical council at Reading in August, 1279; and the enactment in 7 Edw. I, of the statute ‘de Religiosis’ or ‘statute of mortmain.’*

“The growth of the representative system in the construction of church councils” during the thirteenth century, is shewn by a series of documents.<sup>121</sup> In 1278, Archbishop Kilwardby had returned to

<sup>117</sup> Co. Lit., 304 b.

<sup>118</sup> In Phila. edi. of 1812, note 10 refers to note 203. In vol. 1, p. 571, of Tho. Co. Lit., Phila. edi. 1827, the same note is (8.)

<sup>119</sup> “Lord *Hale* speaks largely of this court in his Treatise on the jurisdiction of the House of Lords; and various references to, and extracts from its proceedings, are to be found in the learned introduction to the *Rotuli Litterarum Clausarum*, lately published by the Record Commissioners. The judgment, therefore, of such a court of errors is of the highest weight.” *Queen v. Millis*, 10 Cl. & Fin. 658. The decision in this case is cited in 1 Rob. Pract., ch. 19, pp. 99, 100.

<sup>120</sup> 1 *Spence's Eq.*, 335, note.

<sup>121</sup> In Stubbs's Select Charters, p. 442 to 446; 1. In 1225, by Archbishop Langton, a “summons to a council of bishops,” embracing “deans of cathedrals, archdeacons, abbots and conventual priors;” 2. In same year (1225), “a summons by the same archbishop, directing, in addition to the above, the presence of proctors for the chapters of the collegiate churches, and for the monasteries;” 3. In 1258, “a summons by Archbishop Boniface, directing the presence of bishops, deans, abbots and priors; and of the archdeacons, with letters of proxy from the clergy of their archdeaconries;” 4. In 1273, “a summons by Archbishop Kilwardby, direct-

Rome; the monks and the king desired Bishop Burnel to be his successor, but the Pope preferred John Peckham, an Englishman of great reputation.<sup>122</sup> The first year of his primacy was signalized by his proceedings in a council at Reading, in August, 1279; which the king thought had gone beyond the limits of ecclesiastical jurisdiction. In 7 Edw. I, was enacted the famous statute '*de Religiosis*,' or 'Statute of Mortmain.'<sup>123</sup>

14. *Of the ecclesiastical council at Lambeth in 1281; and the king's prohibition. Of the councils called by the king in 1282 and 1283; the enactment, in 1283 (11 Edw. I), at Acton-Burnell, (the place of Chancellor Burnel's birth and residence), of what is called the statute of merchants, or the statute of Acton-Burnell. What, under this statute, is to be done by the chancellor. Also of the statutes of Wales and the statute of Rhuddlan; a clause in the latter limiting the jurisdiction of the court of Exchequer. How legal business was now divided between three courts. Of the care, in 1284, of the Great Seal during the chancellor's absence.*

In 1281, "in a council at Lambeth, the prelates proposed to exclude the royal courts from the determination of suits on patronage, and from intervention in causes touching the chattels of the spirituality. The king interfered with a peremptory prohibition; and Peckham gave way."<sup>124</sup>

In 1282, the king was in great need of money for the war in Wales; he was at Rhuddlan, attended by most of the barons, and could not bring the clergy and commons to parliament in the midst of a hostile country; a new expedient was tried: two provincial councils were called for the 20th of January, 1283, one at York, for the province of York, the other at Northampton, for the province of

ing the bishops to bring with them three or four of their greater clergy;" 5. In 1277, "a mandate addressed by Archbishop Kilwardby to the bishop of London, as dean of the province, directing him to summon the bishops of the province, with the greater members of their chapters, the archdeacons and the procurators of the clergy."

<sup>122</sup> Foss's Biogr. Jurid.; 2 Stubbs's Const. Hist., ch. 14, p. 111.

<sup>123</sup> 1 Statutes of the Realm, 51; Select Charters, p. 447 to 449; 2 Stubbs's Const. Hist., pp. 111, 112. It remains in 1 'Statutes Revised,' ed. 1870, p. 33 to 35.

<sup>124</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 113, 114.

Canterbury. Before the convocation of Canterbury had determined on its course, and after David, the brother and successor of Llewellyn, surrendered as prisoner, Edward (at Rhuddlan) called another council of the kingdom.<sup>125</sup>

"The writs for this assembly were issued on the 28th of June. The sheriff of each county was to return two elected knights, and the governing bodies of twenty cities and boroughs were to return two representatives for each. Eleven earls, ninety-nine barons, and nineteen other men of note, judges, councillors and constables of castles, were summoned by special writ. The day of meeting was fixed, September 30, and the place was Shrewsbury. The clergy, as the business was a trial for a capital offence, were not summoned. At Shrewsbury, accordingly, David was tried,<sup>126</sup> condemned and executed; his judges were a body chosen from the justices of the Curia Regis under *John de Vaux*."<sup>127</sup>

While parliament was sitting at Shrewsbury, the king was on a visit to Acton-Burnell,<sup>128</sup> the place of his chancellor's birth and residence. When the trial at Shrewsbury was over, the parliament joined the king at Acton-Burnell, and sat in a hall<sup>129</sup> of the bishop's mansion. Here was passed the ordinance called the statute of merchants or the statute of Acton-Burnell.<sup>130</sup> In this statute or ordinance, after such recital as is mentioned below,<sup>131</sup> the provision for a

<sup>125</sup> Select Charters, p. 449, *et seq.*; 2 Stubbs's Const. Hist., ch. 14, p. 114 to 116; Green's Short Hist., ch. 4, § 1, p. 190; Green's Hist., Engl. Peop., book 3, ch. 4, p. 333, of vol. 1.

<sup>126</sup> 2 Stubbs's Const. Hist., ch. 14, p. 116; Select Charters, pp. 457, 458; Green's Short Hist., ch. 4, § 1, p. 190; Green's Hist. of Engl. Peop., book 3, ch. 4, pp. 333, 334, of vol. 1.

<sup>127</sup> Mentioned in § 8, p. 391. In 11 Edw. I, he was appointed steward of Aquitaine. He died in 1288. Foss's Biogr. Jurid.

<sup>128</sup> In Salop county; distant from Shrewsbury 7, and from London 155 miles.

<sup>129</sup> Foss's Biogr. Jurid. That "there had certainly been a spacious hall on the first floor," is mentioned in 1 Campbell's Lives of the Chancellors, ch. 10, note,

p. 168, of 2d ed. (1846), p. 162, Boston ed. 1874. That 'the hall was 183 feet long by 41 broad,' and 'the gable ends only remain,' is stated in 1 Dugdale's Engl. & Wales, p. 13.

<sup>130</sup> 2 Stubbs's Const. Hist., ch. 14, p. 116.

<sup>131</sup> It recites that "merchants, which heretofore have lent their goods to divers persons, be greatly impoverished because there is no speedy law provided for them to have recovery of their debts, or the day of payment assigned; and, by reason thereof, many merchants have withdrawn to come into this realm with their merchandize, to the damage as well of the merchants as of the whole realm." 1 Stat. of the Realm, 53, 54. Other statutes of merchants (or amendments thereof) are 13 Edw. I, *Id.*, 98; 5 Edw. II, *Id.*, 165; 14 Edw. III, *Id.*, 285.

recognizance before a mayor, or before the mayor and a clerk, is followed by this enactment:

That "if the debtor have no moveables within the jurisdiction of the mayor, whereupon the debt may be levied, but hath some other-where within the realm, then shall the mayor send the recognizance made before him, and the clerk aforesaid, *unto the chancellor*, under the king's seal; and *the chancellor shall direct* a writ unto the sheriff."<sup>132</sup>

After this enactment (October 12, 1283) the king extended his royal visit till November.<sup>133</sup> He aimed in Wales "to establish tranquillity in the towns, to introduce the English jurisprudence, to divide the country into shires and hundreds on the English model, and to abolish by the 'Statute of Wales' the more barbarous of the Welsh customs." At Rhuddlan<sup>134</sup> were drawn up the 'Statutes of Wales',<sup>135</sup> and the 'Statute of Rhuddlan',<sup>136</sup> or "provisions made in the Exchequer."<sup>137</sup>

<sup>132</sup> 1 Stat. of the Realm, 53.

<sup>133</sup> Foss's Biogr. Jurid. In vol. 1, p. 27, of Sir H. Ellis's third series of Original Letters, is the letter of Edw. I, to the Prior and Prioress of Alvingham, in Lincolnshire, to admit one or more of the children of Llewellyn ap. Griffith, late Prince of Wales, or of his brother, David, into their house. The letter is dated at "*Ludlow xi die Novembris anno regni nostri undecimo.*" Ludlow is on the edge of Shropshire (Salop), and is distant from Shrewsbury 29, and from London 150 miles.

<sup>134</sup> In Flint county; distant from St. Asaph 3, and from London 224 miles. Here Edward is said to have delivered an address to the Welch, "promising to give them a prince born amongst themselves, one who never spoke a word of English, and whose life and conversation were free from human censure." The birth of Prince Edward, in Carnarvon (or Caernarvon) Castle, had then occurred. 2 Dugdale's Engl. & Wales, pp. 395, 396. Miss Strickland gives an interesting account of what occurred

at Caernarvon Castle; and afterwards, when the queen changed her residence to Conway Castle. 2 Queens of England, p. 98 to 100, of Phila. edi. 1857.

<sup>135</sup> By the advice (he states) of the nobles of the Realm. "They were intended to assimilate the administration of Wales to that of England." Though they were not the subject of parliamentary deliberation, yet it is thought "they throw much light on the existing institutions of the shire in England itself." 2 Stubbs's Const. Hist., ch. 14, pp. 116, 117. They are in 1 Stat. of the Realm, 55-68.

<sup>136</sup> Statutes concerning money made at Carnarvon on the feast of St. Michael, in the 12th year, are in 1 Stat. of the Realm, p. 219 to 221.

*Richard de Abyngdon* held the office of chamberlain of North Wales from 12 to 18 Edw. I, his duty being the collection and disbursement of revenues in that country. Foss's Biogr. Jurid. .

<sup>137</sup> 1 Statutes Revised, p. 35 to 40, of edi. 1870.

Whereof the most important clause is one which forbids pleas to be holden or pleaded in the Exchequer, unless they specially concern the king and his official servants<sup>138</sup> This marks a stage in the division of legal business between the three courts now actively at work under distinct bodies of judges.<sup>139</sup>

For securing his conquest of Wales, Edward built the two strong castles of Caernarvon and Conway.<sup>140</sup> Conway castle was completed in 1284.<sup>141</sup>

Three clerks in chancery, *Hugh de Kendal*, *Walter de Odyam* and another were, July 25, 1284, entrusted with the care of the Great Seal, during the chancellor's temporary absence.<sup>142</sup>

15. *Statute of Westminster the second* (1285); especially ch. 10, against fraud by delivering writ in party's absence; ch. 19, as to liability for intestate's debts, so far as his goods will extend; ch. 24, providing against one having to depart from court without remedy; ch. 29, as to proceedings for trespass and on appeals; ch. 30, before whom, and when and how assizes and inquisitions shall be taken, and by whom clerks shall be appointed; ch. 43, prohibiting the bringing before others matters belonging to the king's court; ch. 49, to prevent justices or other officers from receiving or taking what they ought not to receive or take..

In the summer of 13 Edw. I (1285), was passed the statute called *Westminster the second*;<sup>143</sup> great part of which remains in

<sup>138</sup> Section ii recites that pleas "were heretofore holden in the Exchequer, which did not concern us nor our ministers of the Exchequer," and ordains that "no plea shall be holden or pleaded in the Exchequer aforesaid, unless it so specially concern us and our ministers aforesaid." 1 Stat. of the Realm, 70.

<sup>139</sup> 2 Stubbs's Const. Hist., ch. 14, p. 117.

<sup>140</sup> Caernarvon Castle is described in the Penny Magazine for 1834, May No. 138, p. 207; of Conway Castle there is a view in *Id.* for 1838, July No. 406, p. 291.

<sup>141</sup> *Id.*, for 1844, April, p. 158.

<sup>142</sup> Foss's Biogr. Jurid.

<sup>143</sup> "*Westminster*, because this parliament was holden at Westminster; and *the second* in respect of the former parliament holden at Westminster, called *Westminster the first*." 2 Inst., 331; 1 Stat. of the Realm, 71-95. Ch. 1 is '*de donis conditionalibus*.' As to other chapters Mr. Stubbs observes, "the law of dower, of advowson, of appeal for felonies, is largely amended; the institution of justices of assize is remodelled, and the abuses of manorial jurisdiction repressed; the statute *de religiosis*, the statutes of Merton and Gloucester are

'The Statutes Revised.'<sup>144</sup> In its tenth chapter is this recital:

"Whereas in the circuit of justices it was proclaimed that all such as would deliver writs, should deliver them within a certain time, after which no writ should be received; many trusting upon the same and tarrying until the said time, and no writ served upon them, departed by license of the said justices; after whose departure, their adversaries, perceiving their absence, delivered their writs in wax, which, sometimes by fraud, and sometimes for rewards be received of the sheriff, and they that thought to have departed quiet, lose their lands."

For remedy of such fraud there is an enactment, which concludes as follows:

"That such as have lands in divers shires where the justices make their circuit, and that have land in shires where the justices have no circuit, that fear to be impleaded, and are impleaded of other lands in shires where they have no circuit, as before the justices at Westminster, or in the king's bench, or before justices assigned to take assizes, or in any county before sheriffs, or in any court baron, may make a general attorney to sue for them in all pleas in the circuit of justices, moved, or to be moved for them, or against them, during the circuit; which attorney or attorneys shall have full power in all pleas moved during the circuit, until the plea be determined,<sup>145</sup> or that his master remove him; yet shall they not be excused thereby, but they shall be put on juries and assizes before the same justices."<sup>146</sup>

Chap. 19, of stat. 13 Edw. I (Westm. 2), recites that "whereas after the death of a person dying intestate which is bounden to some other for debt, the goods come to the ordinary to be disposed;" and enacts that "the ordinary from henceforth shall be bound to answer the debts as far forth as the goods of the dead will extend, in such sort

amended and reënacted."—"The whole, like the first statute of Westminster, is a code in itself, and justifies the praises of the annalist." (Ann. Osney, p. 304.) 2 Stubbs's Const. Hist., ch. 14, p. 118; 1 Turner's Engl., p. 139.

<sup>144</sup> Edi. 1870, vol. 1, p. 40 to 73.

<sup>145</sup> By the judgment against the defendant the warranty of attorney is determined; for thereby *placitum terminatur*, but only to sue execution (which is the fruit of the judgment) within the year; and if he sue out exe-

cution within the year, he may prosecute the same after the year; but if he sue out no execution within the year, then after the year is ended, after judgment, his warrant of attorney is determined." 2 Inst., 378.

<sup>146</sup> 2 Inst., 376. "The wisdom of parliaments, and of the sages of the law, hath ever been, that able and sufficient men should not (to the hindrance of justice) be exempted for service in juries and assizes." *Id.*

as the executors of the same party should have been bounden if he had made a testament."<sup>147</sup>

The commencement of chapter 24 (of Westm. 2) is thus:

"In cases wherein a writ is granted out of the chancery, for the fact of another, the plaintiffs from henceforth shall not depart from the king's court without remedy, because the land is transferred<sup>148</sup> from one to another, and in the register of the chancery<sup>149</sup> there is no special writ found in this case, as of a house, a wall, a market; but the writ is granted against him that levied the nuisance. And if the house, wall or such like be aliened to another, the writ shall not be denied; but from henceforth, when in one case a writ is granted, in like case, when like remedy faileth, the writ shall be made as hath been used before."

Then there are examples and illustrations. After which the chapter concludes thus:

"And whenever from henceforth it shall fortune in the chancery that in one case a writ is found, and in like case falling under like law, and requiring like remedy, is found none, the clerks of the chancery<sup>150</sup> shall agree in making the writ; or the plaintiffs may adjourn it until the next parliament, and let the cases be written in which they cannot agree, and let them refer themselves to the next parliament, and by consent of men learned in the law, a writ shall be made, lest it might happen after, that the court should long time fail to minister justice unto complainants."<sup>151</sup>

<sup>147</sup> 2 Inst., 397; 1 Stat. of the Realm, p. 82. On this statute there are observations by *Weston*, J., in 7 Eliz., in *Graysbrook v. Fox*, Plowd. 277; by Ld. *Coke* in 2 Inst., 397, 398; and by Lord *Talbot* in *Hudson v. Hudson*, Forrester (Cas. Temp. Talb.) 128.

<sup>148</sup> 2 Inst., 404. "Before the making of this act, an assize of nuisance did not lie against him that levied the nuisance, and against his alienee; so as by the alienation of the wrong doer the assize of nuisance failed, and he, to whom the nuisance was done, was driven to his *quod permittat* (which was a writ of right in his nature, wherein was great delay,) against the alienee; and the reason thereof was, for that there was no writ of assize of nuisance in the register, but that supposed that the tenant in the

assize *levavit*, which is remedied by this act." *Id.*, 405.

<sup>149</sup> "A book of great antiquity and authority in law." *Id.*, 406.

<sup>150</sup> "These that are called *clerici*, were at this time, and before, called also *magistri cancellariæ*, and were associated to the lord chancellor." 2 Inst., 407.

<sup>151</sup> It seemed to Sir William Blackstone that "this accounts for the very great variety of writs of trespass on the case to be met with in the register, whereby the suitor had ready relief according to the exigency of his business, and adapted to the specialty, reason and equity of his very case, which provision (with a little accuracy in the clerks of the chancery, and a little liberty in the judges, by extending rather

Chap. 29 and 30 (of Westm. 2) are as follows:

29. "A writ of trespass<sup>152</sup> (*ad audiendum et terminandum*) from henceforth shall not be granted before any justices, except justices of either branch,<sup>153</sup> and justices in eyre, unless it be for an heinous trespass, where it is necessary to provide speedy remedy, and our lord the king of his special grace hath thought it good to be granted. And from henceforth a writ to hear and determine appeals before justices assigned shall not be granted but, in a special case, and for a cause certain when the king commandeth. But lest the parties appealed or indicted be kept long in prison, they shall have a writ of *odio et atia*, like as it is declared in *Magna Charta* and other statutes."

30. "From henceforth two justices sworn shall be assigned, before whom and none other assizes of novel disseisin, mort d'ancestor and attaints shall be taken, and they shall associate unto them one or two of the discreetest knights of the shire into which they shall come; and shall take the aforesaid assizes and attaints but thrice in the year at the most."<sup>154</sup> And in every shire, at every taking of assizes, before that departure they shall appoint the day of their return,<sup>155</sup> so that every one of the shire may know of their coming, and shall adjourn the assizes from term to term, if the taking of them be deferred at any day by vouching to warranty, by essoin or by default of jurors. And if they see that it be profitable for any cause that assizes of mort d'ancestor, being respited by essoin or voucher ought to be adjourned into the bench, it shall be lawful for them to do it, and then they shall send the record with the original writ before the justices of the bench; and when the matter is come to the taking of the assize, the justices of the bench shall remit the matter<sup>156</sup> to the former justices before whom the assize shall be taken. But from

than narrowing the remedial effects of the writ,) might have effectually answered all the purposes of a court of equity, except that of obtaining a discovery by the oath of the defendant.' 3 Bl. Com. 52, where, in a note, it is stated that "this was the opinion of *Fairfax*, a very learned judge in the time of Edward the fourth." Year B. 21 Edw. IV, 23.

<sup>152</sup> "This act doth not only extend to authority granted by writ but by commission also." 2 Inst., 418.

"*Transgressionem* (trespass) is here taken in a large sense for any outrage or misdemeanour." 2 Inst., 419.

"The mischief before the making of this act was, that commissioners of oyer and terminer, &c., were procured and

named by the parties whom the matter concerned, so as the commissioners were neither indifferent, nor of sufficient knowledge and learning." *Id.*

<sup>153</sup> For the men of either bench "are presumed to be men of integrity, indifference, skill and knowledge." *Id.*

<sup>154</sup> Here the days were designated, but they have been altered by later statutes. 2 Inst., 420, 423.

<sup>155</sup> That is, by proclamation in open court. *Id.*, 423.

<sup>156</sup> "That is, the record of the assize, together with the original writ, shall be remanded to be taken, &c., in the proper county before the former justices." 2 Inst., 423.



henceforth the justices of the bench in such assizes shall give four days at the least in the year before the said justices assigned, for to spare expense and labour. Inquisitions of trespass shall be determined before the justices of both benches, except the trespass be so heinous that it shall require great examination. Inquisitions also of other pleas pleaded in either of the benches shall be determined before them wherein small examination is required, as when the entry or seisin of any is denied, or in case when one article is to be enquired. But inquisitions of many and great articles, the which require great examination shall be taken before the justices of the bench, except that both parties desire that the inquisition may be taken afore some of the associates when they do come into those parts; so that from henceforth it shall not be done but by two justices or one with some knight of the shire, upon whom the parties can agree. And such inquisitions shall not be determined by any justices of the bench, unless a day and a place certain be appointed in the shire, in presence of the parties, and the day and place shall be mentioned in a writ judicial."<sup>157</sup>

"And when such inquests be taken, they shall be returned into the bench, and there shall judgment be given, and there they shall be enrolled."<sup>158</sup> And if any inquisitions be taken otherwise than after this form, they shall be of no effect,<sup>159</sup> except that an assize of *darrein presentment*, and inquisitions of *quare impedit* shall be determined in their own shire before one justice of the bench and one knight, at a day and place certain in the bench assigned, whether the defendant consent or not, and there the judgment shall be given immediately. All justices of the benches from henceforth shall have in their circuits clerks<sup>160</sup> to inroll all pleas pleaded before them, like

<sup>157</sup> By these words: '*Præcipimus tibi quod venire facias coram justiciariis nostris apud Westmonast, in octa sancti Michaelis, nisi talis et talis, die et loco ad partes illas venerint*, xii, &c.' *Ld. Coke* says: "The judicial writ now in use hath *prius* before *venerint*, and therefore it taketh the name of *nisi prius*." 2 *Inst.*, 424. And *Mr. Stubbs* observes, the justices "received the name of justices of *nisi prius*." 2 *Stubbs's Const. Hist.*, ch. 15, p. 271.

<sup>158</sup> "The return of the justices is *Ad quem diem hic venerunt partes præd., et justiciarii ad assisas coram quibus, &c., miserunt hic record' in hæc verba*; and this return is called the *postea*, because the record beginneth thus: '*Postea die*

*et loco infra contentis coram* (and nameth the justices of assize) *justiciariis ipsius domini regis ad assisas in com. n. capiend. assignat' per formam statuti venerunt tam le pl' quam le def., &c.*" 2 *Inst.*, 424.

<sup>159</sup> "For the rule of law is, *non observata forma infertur adnullatio actus*; but that rule is to be understood, *de essentiali forma*, and not *de accidentali*." 2 *Inst.*, 424.

<sup>160</sup> 2 *Dy.*, 175 b. "The justices of courts did ever appoint their clerks."—"The reason thereof is twofold. 1. For that the law doth ever appoint those that have the greatest knowledge and skill, to perform that which is to be done. 2. The officers and clerks are but to enter, inroll or effect that which the justices

as they have used to have in time passed. And also it is ordained that the justices assigned to take assizes shall not compel the jurors to say precisely whether it be disseisin or not, so that they show the truth of the fact and seek aid of the justices.<sup>161</sup> But if they of their own head will say whether it is disseisin or not, their verdict shall be admitted at their own peril. And henceforth the justices shall not put in assizes or juries any other than those that were summoned to the same at the first.<sup>162</sup>

The commencement of ch. 43 (of Westm. 2) is as follows:

"Be it prohibited from henceforth to hospitallers and templars, that hereafter they bring no man in plea before the keepers of their privileges, for any matter the knowledge whereof belongeth to the king's court."<sup>163</sup>

do adjudge, award or order, the insufficient doing whereof maketh the proceeding of the justices erroneous, than the which nothing can be more dishonorable and grievous to the justices and prejudicial to the party; therefore the law, as here it appeareth, did appropriate to the justices the making of their own clerks and officers, and so to proceed judicially by their own instruments." 2 Inst., 425.

<sup>161</sup> "Before this act some justices did rule over the recognitors to give a precise or direct verdict without finding the special matter." 2 Inst., 422. *Ld. Coke* says: "It hath been resolved, that in all actions, real, personal and mixt, and upon all issues joined, general or special, the jury might find the special matter of fact pertinent, and tending only to the issue joined, and thereupon pray the discretion of the court for the law: and this the jurors might do at the common law, not only in cases between party and party, whereof this act putteth an example of the assize, but also in pleas of the crown at the king's suit, which is a proof of the common law, for if this act had made a new law, and that other like cases between party and party had been taken by equity, yet the king had not been bound thereby;" and it is noted that "the

next precedent clause of this act, and the subsequent, are both in affirmance also of the common law." *Id.*, 425, 426.

<sup>162</sup> The meaning of this last sentence is, "that the justices shall not suffer the sheriff to put into the panel any men which were never summoned: for before this act of the sheriff had made a panel, and the jurors had not appeared, the sheriff would have impannelled others of the same county who were never summoned, which was a wrong to them that were so newly returned, and is now prohibited by this act; whereupon any so unduly returned may have his action against the sheriff, for this act is made for the relief of them that were so unduly returned." 2 Inst., 426.

<sup>163</sup> *Ld. Coke* says: "The hospitallers and templars had divers great liberties and privileges, and amongst the rest they held an ecclesiastical court before a canonist or some of the clergy whom they termed *conservator privilegiorum suorum*, which judge having indeed more authority than was convenient, yet did he daily, in respect of the height and greatness of these two orders, and at their instance and direction, encroach and hold plea of matters determinable by the common law, for *cui plus licet quam par est, plus vult quam licet*; and this was one great mischief. Another

It being doubted whether the chancellor, treasurer, justices and members of the king's council (being persons of such eminence) were within the words *nul minister le roi*, in stat. Westm. 1, c. 25 (cited in § 6, p. 386), and the stat. Westm. 1, c. 28 (2 Inst., 212, 213), extending but to the clerks of the king, or of the justices, the following material addition and explanation were made by ch. 49 of Westm. 2.

"The chancellor, treasurer, justices nor any of the king's council, no clerk of the chancery nor of any justice or other officer, nor any of the king's house, clerk nor lay, shall not receive any church, nor advowson of a church, land nor tenement in fee, by gift nor by purchase, nor to farm, nor by champerty, nor otherwise, so long as the thing is in plea before us, or before any of our officers; nor shall take no reward thereof. And he that doth contrary to this act, either himself or by another, or make any bargain, shall be punished at the king's pleasure, as well he that purchaseth as he that doth sell."<sup>164</sup>

16. *Of the statute of Winchester, and other legislation, in 1285. Of justices itinerant in same year. In what year were the statutes of Exeter.*

The statute dated at Winchester, the 8th of October, in 13 Edw.

mischief was that this judge, likewise at their instance, in cases wherein he had jurisdiction, would make general citations as *pro salute animæ*, and the like, without expressing the matter whereupon the citation was made, which also was against law, and tended to the grievous vexation of the subject, both which mischiefs, or rather abuses, are remedied by this act." 2 Inst., 465.

<sup>164</sup>Ld. Coke observes "that neither the chancellor, treasurer, any of the justices, or any of the king's council, nor any clerk herein mentioned, nor any of the king's house, of the clergy or laity, shall (hanging the plea) receive any advowson, land or tenement, by gift, purchase or farm, either for champerty or otherwise; so as none of these persons here prohibited can acquire any advowson,

land or tenement, depending the plea, though it be *bona fide*, and not for champerty or maintenance, partly in respect of their greatness, and partly in respect of their places, both in the king's courts and in the courts of justice; so as the very countenance and places of these men, when they become interested in the land (*eo ipso*) are apparent hinderances of the due and indifferent proceeding of law and justice. An excellent law, and worthy to be known, and most necessary to be put in execution; so as true it is, that if any other person purchase *bona fide*, depending the suit, he is not in danger of champerty; but these persons here prohibited cannot purchase at all, neither for champerty nor otherwise, depending the plea." 2 Inst., 484.

I,<sup>165</sup> is published at large by Mr. Stubbs.<sup>166</sup> He cites it in connection with Stat. Westm. 2 to "illustrate the character of the wise law-giver"; and says,

"Together they form the culminating point of Edward's legislative activity, for although several important acts were passed in his later years, there are none which shew so great constructive power or have so great political significance, unless indeed, we except the statute of 1290."<sup>167</sup>

In ch. 15 § 36 p. 363, there is mention of *Articuli Cleri* in 51 Hen. III. Lord Coke says, the 'act of parliament entitled *prohibitio formata de statuto articuli cleri*' 'was made in the time of Edward the first, about the beginning of his reign.'

"After this, the clergy, at a parliament holden in the reign of the same king, E. I, preferred articles intituled *articuli contra prohibitionem regis*, fearing lest by reason of some general words therein, they might be prohibited in causes which of right belonged to the ecclesiastical jurisdiction."—"And a just and legal answer was made thereunto."—"But it is to be observed that they claimed nothing which was against the true meaning of the" "act called *prohibitio formata de statuto articuli cleri*, nor any of Boniface's canons to be confirmed."<sup>168</sup>

In 13 Edw. I was the statute '*de circumspecte Agatis*.'<sup>169</sup> And Mr. Stubbs considers that to this year (1285) must be "referred the decision of the contest, which had been so long proceeding, on the jurisdiction of the ecclesiastical courts."<sup>170</sup> The statute '*de circumspecte Agatis*,' which was remarked on in Virginia, in 1826,<sup>171</sup> is the subject of observations by Mr. Stubbs in more than one of his volumes.<sup>172</sup>

*Hamon Hauteyn*<sup>173</sup> sat, with *Ralph de Hengham* and others, as a

<sup>165</sup> 1 Statutes of the Realm, 96-98. Part of Sect. 6 is in 1 'Revised Statutes,' edi. 1870, p. 74.

<sup>166</sup> Select Charters, p. 459 to 464.

<sup>167</sup> 2 Const. Hist., ch. 14, p. 118; 1 Green's Hist. of Engl. Peop., book 3, ch. 4, pp. 334, 335.

<sup>168</sup> 2 Inst., pp. 600, 601; 1 Stat. of the Realm, p. 209.

<sup>169</sup> 2 Inst., p. 487 to 493; 1 Stat. of the Realm, 101; 1 'Statutes Revised,' edi. 1870, p. 74 to 76.

<sup>170</sup> 2 Const. Hist., ch. 14, pp. 118, 119; Green's Short Hist., ch. 4, § 2, p. 192. As to 9 Edw. 2, see *post*, ch. 18, § 15.

<sup>171</sup> By *Dade, J.*, in *Anderson v. Com.*, 5 Rand. 629.

<sup>172</sup> 2 Const. Hist., ch. 14, p. 119; 3 *Id.*, ch. 19, p. 347.

<sup>173</sup> Supposed to be so named from a manor called Hauteyn's, in the parish of Bernham-Broom in Norfolk. He held some office in the Exchequer. Being entrusted with the sheriffalty of Lincoln-

justice itinerant for Suffolk county in 1285 (13 Edw. I).<sup>174</sup>

*Nicholas le Gras*<sup>175</sup> is the last named of the justices itinerant appointed into Northamptonshire by a writ of Aug. 3, 1285 (13 Edw. I).<sup>176</sup>

To 14 Edw. I has been ascribed "the Statutes of Exeter."<sup>177</sup>

17. *In the chancery court, many officers; to John de Langton is traced in 14 Edw. I (1286) the title of Master or Keeper of the Rolls. With this office is united that of Custos 'domus conversorum.'*

In Lord Coke's chapter of 'the Court of Chancery,' it is said, "There be in this court many officers, ministers and clerks of the court, the principal whereof is the master of the Rolls, anciently called *garden des rolles, clericus rotulorum, custos rotulorum.*"<sup>178</sup>

*John de Langton*, who had been a clerk in the chancery, is in a patent of 14 Edw. I (1286), called '*Custos Rotulorum Cancellariæ Domin. Regis,*' a duty which then probably devolved on the senior clerk of the chancery; and is the first person to whom the title of master or keeper of the Rolls is distinctly traced.<sup>179</sup>

In this reign the office of *custoes 'Domus Conversorum,*' mentioned in ch. 15, § 39, p. 370, note 481, was first united with that of Master of the Rolls. After, "by the banishment of the Jews from England, the object of its foundation gradually ceased, the house was annexed to the office of master of the Rolls, and thenceforward received the

shire, in 44 and 45 Hen. III, he incurred an amercement of 10 marks for delaying the execution of the writ till it was too late to act upon it. He was, in 1 Edw. I, a justice of the Jews, and acted as assessor in London and Middlesex, of the fifteenth granted in 3 Edw. I. Foss's Biogr. Jurid.

<sup>174</sup> In the next year (1286) being called to account by the treasurer and barons of the Exchequer, and convicted of misdemeanors, he was suspended from his office of justice of the Jews. *Id.*

<sup>175</sup> Was appointed sheriff of Surrey

and Sussex in 8 Edw. I, and held the office for five years. In 10 Edw. I, was committed to his charge the castle of Odyham, in Hampshire. *Id.*

<sup>176</sup> He was possessed of the manors of Renger in Terling, and of Little Badewe in Essex. *Id.*

<sup>177</sup> 1 Stat. of the Realm, p. 210, *et seq.*

<sup>178</sup> 4 Inst., 95.

<sup>179</sup> He was an ecclesiastic, and held among other preferments canonries in the churches of Chichester, Lincoln and York, and the treasurership of Wells. Foss's Biogr. Jurid.

name by which it" has been since "distinguished."<sup>180</sup>

18. In 1286 the king took with him to Gascony the Chancellor and the Great Seal. Working of the justices in his absence. In 1289 the barons refused him a grant until they should see him in his own land. On his return he heard complaints against the justices. The two chief justices and some other officers are removed from office, fined and otherwise punished; and are succeeded by Gilbert de Thornton and John de Mettingham and others. Of Mettingham as a judge, a scholar and an author.

In May, 1286, Edward went to Gascony, leaving the kingdom under the care of his cousin, Edmund of Cornwall, and taking with him the Chancellor and the Great Seal."<sup>181</sup> Absence of the king and chancellor did not prevent the justices from working. *Walter de Stircheleye*<sup>182</sup> is the last named of six justices itinerant sent into Hertfordshire in 15 Edw. I (1287).<sup>183</sup>

In 1289 "the parliament met at Candlemas" (Feb. 2). "*John Kirkeby*, now bishop of Ely and treasurer, laid the king's needs before the magnates."—"The Earl of Gloucester, the same Gilbert of Clare who had fought for Edward at Evesham and had been the first to swear fealty at his accession, who was now betrothed to the king's daughter, was the spokesman of the barons; nothing, he affirmed, should be granted until they should see the king's face in his own land."

Edward returned home, landing at Dover on the 12th of August. He found himself besieged with complaints against the judges.<sup>184</sup>

<sup>180</sup> *Id.*, *William de Middleton* held the place of Keeper of the Rolls and Writs of the Jews in 2 and 3 Edw. I, together with the key of the Jewish tallage. *Id.*

<sup>181</sup> 2 Stubbs's Const. Hist., ch. 14, p. 119; *Id.*, ch. 15, p. 268. It is stated that, in 1288, a flash of lightning passed between Edward and his Queen, leaving them unhurt, but killing two ladies in the room. 2 Turner's Engl., ch. 2, p. 40, note 4.

<sup>182</sup> Sheriff of Gloucestershire in 9 Edw. I, and in 10 Edw. I of Lincoln-

shire, holding the former office for four, and the latter for three years. Foss's Biogr. Jurid.

<sup>183</sup> In Mich. T., of 15 Edw. I, there was a suit between Walter, the son and heir of Walter de Stircheleye, and Walter, the son of Reginald de Stircheleye, and others, relative to a considerable property in Stircheleye, in Shropshire; which of the three Walters was the justice itinerant does not appear. *Id.*

<sup>184</sup> 2 Stubbs's Const. Hist., ch. 14, p. 120.

By a letter of September 24, 1289, *Ralph de Sandwich*<sup>185</sup> was associated with *John de Lovetot* and other judges of the Common Pleas, as chief justice in the place of *Thomas de Weyland*. It is suggested by Mr. Foss that "as term was about to commence, King Edward, no doubt, commissioned him, in his character of constable of the Tower, an office then of great importance, to act *ad interim*, to prevent an interruption in the ordinary business till the charge was . . . . investigated."<sup>186</sup>

"On the 13th of October" the king "appointed a commission under Burnell<sup>187</sup> to hear the complaints at Westminster on the 12th of November, and to report to him at the next parliament. The result of the enquiry was the removal of the two chief justices, *Hengham*<sup>188</sup> and *Weyland*,<sup>189</sup> Henry Bray, the escheator, *Adam Strat-*

<sup>185</sup> Mentioned in ch. 15, § 36. There was committed to his custody, in 1 Edw. I, the vacant bishopric of London, and, in 5 Edw. I, the castle of Arundel. From that year to the ninth, he acted as escheator south of the Trent, under the title of '*Senescallus regis*.' In 14 Edw. I, he was appointed constable of the Tower of London. Foss's Biogr. Jurid.

<sup>186</sup> *Ralph de Sandwich* continued in this office till Feb., 1290 (Gent. Mag., March, 1852, p. 267). In 30 Edw. I, he is called 'justice de Newgate.' He probably died in 1 Edw. II. *Id.*

<sup>187</sup> The other commissioners were the earl of Lincoln, the bishop of Winchester, John S. John, William Latimer, William de Louth, and William de March. 2 Stubbs's Const. Hist., ch. 14, p. 120.

<sup>188</sup> Besides being removed from office he was fined; there is some uncertainty as to the precise charge against him (Rot. Parl. i, 48, 52), and the amount of the fine (2 R. 3. 10 a). Foss's Biogr. Jurid. The statement in 4 Inst., 255, is, that "*Ranulphus de Ingham*, chief justice of England,—a very poor man, being fined before him at 13s. 4d.,—in another term, moved with pity, caused the record

to be razed, and made 6s. 8d., for which he, for his fine, made the clock (to be heard into Westminster Hall), and the clock-house in Westminster, which cost him 800 marks, and continueth unto this day, which sum was entered into the roll."

<sup>189</sup> Against him the imputation was of heinous crime. "After his apprehension he escaped from custody, and disguising himself, obtained admission as a novice among the friars minors at St. Edmund's Bury. On the discovery of his retreat, the sanctuary was respected for the forty days allowed by the law, after which the introduction of provisions into the convent was prohibited. The friars, not inclined to starvation, soon retired; and the fallen judge, finding himself deserted, was compelled to deliver himself up to the ministers of justice, and was conveyed to the Tower. The king's council gave him the option to stand his trial, to be imprisoned for life, or to abjure the realm." He chose the latter. "The ceremony consisted of his walking barefoot and bareheaded with a crucifix in his hand, from his prison to the seaside, and being placed in the vessel provided for his transportation." To the crown.

ton,<sup>190</sup> clerk of the Exchequer, and" others.<sup>191</sup>

There is not, in connection with the courts, any mention of the name of *John Cave* after 1283,<sup>192</sup> or of that of *Elias de Sutton* later than 15 Edw. I,<sup>193</sup> or of that of *Peter de Chester*<sup>194</sup> after 1288. *John*

was forfeited all his property (stated to have been of the value of 100,000 marks), with the exception of what was transferred to the abbot of St. Edmund's Bury, a small grant to his wife and such manors as were saved from the general wreck, by means of his wife and children being co-tenants of them with him. Foss's Biogr. Jurid.

<sup>190</sup> Some style him chief baron, but the office of chief baron *eo nomine* did not then exist. Nor was he a baron of the Exchequer, except that, "as being chamberlain, he would sometimes set with the barons." The charge against him must have been of serious crime. For not only was he dismissed from the office of chamberlain (Jan. 17, 1290,) and from the moiety of that of usher of the Exchequer, which it seems belonged to him (Abb. Plac. 223, 283; Madox ii, 299, 300), but he was imprisoned, and the whole of his property forfeited, besides the imposition of a fine of 500 marks. Foss's Biogr. Jurid.

<sup>191</sup> 2 Stubbs's Const. Hist., ch. 14, p. 120. In his exposition of *Statutum de Judaismo*, Ld. Coke says: "At this parliament also of this noble king, E. I, in the 18th year of his reign, another kind of Jews were severely punished, viz: the judges of the king's bench, and of the common pleas, the barons of the Exchequer, and the justices itinerants, except two, whom, for their honour, we will name (*in memoria aeterna erit justus*), viz: Sir John of Mettingham, chief justice of the common pleas, and Elias de Bekingham, one of his companions (*qui positi fuerunt in fornace et prodierunt aurum*), for they had dealt uprightly in their places, and

had never stained their hands with sordid bribery." 2 Inst., 508.

Although *William de Sahan* was not only removed from the King's Bench, but fined 3,000 marks, yet he is described in a document (Bib. Cott. Claud., E. VIII, p. 206,) as entirely innocent '*in quo dolus seu fraus non est inventus*', and as paying the fine to conciliate the king. He was alive in 28 Edw. I. Foss's Biogr. Jurid.

Of the Common Pleas *John de Lovetot* was removed and imprisoned in the Tower; for his redemption from which he paid a fine of 3,000 marks. He died in 1294. *Roger de Leicester* was removed; released from imprisonment on paying 100 marks. *William de Brompton*, also removed, had to pay for his enlargement 6,000 marks. *Id.*

Some of those who had been justices itinerant shared in the disgrace. *Solomon de Rochester* (or de Roff) had to pay a fine of 4,000 marks. *Thomas de Sodington* (or Sadington) paid 2,000 marks, and *Richard de Boyland* 4,000 marks. *Walter de Hopton* was also fined, but in a petition made such explanations as were viewed with some favour. *Id.*

<sup>192</sup> Dugdale inserts him as a justice of the King's Bench in 1283 (11 Edw. I). Foss's Biogr. Jurid.

<sup>193</sup> He was a judge of the King's Bench in 13 Edw. I (1285); and is mentioned in that character 'after Easter, 15 Edw. I.' He died in 1289. *Id.*

<sup>194</sup> He had been in 54 Hen. III (1270) a justice itinerant for pleas of the forest. In 1282 he received the provostship of Beverley. He was appointed a baron of the Exchequer in 12 Edw. I (1284), and



*de Metingham*<sup>195</sup> was one, and *Elias de Beckingham*<sup>196</sup> was the other of two mentioned (by Lord Coke) as pure in the administration of justice. *William de Middleton*,<sup>197</sup> who, in 1286, was appointed a baron of the Exchequer, continued there for the four following years.<sup>198</sup>

Now, *Gilbert de Thornton*<sup>199</sup> (or de Torenton) was constituted chief justice of the King's Bench<sup>200</sup> with *Roger le Brabazon*<sup>201</sup> and *Robert Malet*<sup>202</sup> as associates. *John de Metingham* was raised to the head of the Common Pleas with *Elias de Beckingham*,<sup>203</sup> *William de*

continued to act till 1288. He died about 1298. *Id.*

<sup>195</sup> Born at a village, so called, in Suffolk. He is mentioned, in 3 Edw. I (1275), as one of the king's serjeants; and, in 1276, was constituted a judge of the King's Bench; he frequently appears as acting in the court and on the circuits. *Id.*

<sup>196</sup> He is first mentioned as at the bottom of the list of justices itinerant into Middlesex in 2 Edw. I (1274); in 4 Edw. I, he was one of the justices of assize then appointed. Afterwards he was keeper of the records and writs of the Common Pleas; an allowance of 20 shillings was made to him for the expenses of their carriage from Westminster to Shrewsbury, where the king on his expedition to Wales, in 11 Edw. I, had ordered the court to be held. At Michaelmas, 13 Edw. I, he was raised to the bench as a judge of the Common Pleas. *Id.*

<sup>197</sup> In 1296, William de Middleton was appointed Custos Brevium of the court of Common Pleas; in 11 Edw. I, the lands of Isabella, widow of Henry de Gaunt, were committed to his custody. In 1286 he was associated with the escheator in the custody of the bishopric of Ely on its becoming vacant. *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> Mentioned as the king's attorney from 8 to 14 Edw. I (1280-6). This may have been no more than a special appointment to act on the king's part in a particular proceeding: there were in those times two or three so acting in different counties under the designation of '*narratores pro rege.*' (*Abb. Placit.*, 274.) Foss's Biogr. Jurid.

<sup>200</sup> With a salary of £40 per annum; he acted as late as Aug., 1295. During his presidency of the court he composed a Compendium of the Law (in the nature of an abridgment of Bracton's work), which is mentioned in ch. 17, § 8.

<sup>201</sup> Descended from Roger le Brabazon, who came over with the Conqueror. In 15 Edw. I (1287), this descendant acted as a justice itinerant for pleas of the forest in Lancashire; that he was high in the king's esteem is evident from his prominent part in the meeting of Scottish nobility and clergy at Norham, May 10, 1291. Foss's Biogr. Jurid.

<sup>202</sup> He is mentioned in this character as late as 1294, in which year he died. *Id.*

<sup>203</sup> He died or retired from the bench in 34 Edw. I (1305). He was buried at Bottisham church, in Cambridgeshire. *Id.*

*Giselham*,<sup>204</sup> *Robert de Hertford*<sup>205</sup> and *Robert de Thorpe*<sup>206</sup> as associates.

From Porphirius, who, born at Tyre in 233, had at Athens Longinus for his instructor, and at the age of thirty removed to Rome,<sup>207</sup> *Metingham*, C. J., in 21 Edw. I, quoted through a translation:

"*Accidens est quod adest et abest præter subjecti corruptionem.*"<sup>208</sup>

An accident is something which may be present or absent, without detriment to the subject.

This has been referred to as decisive evidence of *Metingham's* liberal education.<sup>209</sup> He wrote a treatise called '*Judicium Essoniorum.*'<sup>210</sup>

19. In 18 Edw. I estate recovered on the ground of illegitimacy. Business of parliaments of 1290; and of 1291-2. Of the expulsion of Jews from the realm; deaths of the queen and the treasurer; appointments of new treasurer and additional barons of the Exchequer. Death, in 1292, of Chancellor Burnel. His character. The Master of the Rolls (*John de Langton*) elevated to the chancellorship. Walter de Langton made treasurer. Trouble arising from P. de Gaveston.

"In a suit in 18 Edw. I," was "recovered a considerable estate in Bedfordshire from Henry, the son of Beatrice, the widow of *Robert de Badeswell*, by proving that Henry was born eleven days after the forty weeks which is the legitimate time of bearing by women; the more especially as it was further shewn that Beatrice had no access to her husband for one month before his death."<sup>211</sup>

The title of the earliest Rolls of Parliament extant, viz.: 18 E. I,

<sup>204</sup> He probably took his name from the place, so called, in Suffolk. On occasions, from 7 to 14 Edw. I, he is described as 'the king's attorney; in 10 Edw. I, he and Gilbert de Thornton are designated *narratores pro rege*.' In Jan., 1293, he was killed (7 Rep. Pub. Rec., App. ii, 249). Foss's Biogr. Jurid.

<sup>205</sup> He acted till 1295. *Id.*

<sup>206</sup> As his name does not occur after 1291, he probably died in that year. *Id.*

<sup>207</sup> He died at Rome in 304. His existing works are—I. *De abstinentia ab esu animalium*; 2. *De Vita Pythagoræ*;

3. *Sententiæ ad intelligibilia ducentes*; 4. *De Antro Nymphorum*. Watkins's Biogr. Dict., edi. 1822.

<sup>208</sup> Year Book, 21 and 22 Edw. I, p. 73.

<sup>209</sup> P. 11 of Preface to. *Id.*

<sup>210</sup> He presided over the Common Pleas till his death, in 1301. Among the benefactors of the university of Cambridge, prayer is directed to be made 'pro anima Lñi John de Metyngham.' Foss's Biogr. Jurid.

<sup>211</sup> Foss's Biogr. Jurid., tit. *Badeswell*, p. 544, of edi. 1870.

vol. I, p. 15, is, '*Placita coram Domino Rege et ejus consilio ad Parliamentum sua.*'<sup>212</sup> In 1290, the January parliament<sup>213</sup> left business to be completed in a second session three weeks after Easter. In April the king's daughter, Johanna, was married to the Earl of Gloucester.<sup>214</sup> It is not until the 29th of May, that the full parliament is found sitting. On that day a grant of aid *pur fille marier* is made.<sup>215</sup> The statute of Westminster the third, '*Quia Emptores*'<sup>216</sup> was enacted on the 8th of July.<sup>217</sup> In the same year (18 Edw. I) is 'The Statute of Quo Warranto,'<sup>218</sup> and 'The Statute of the writ of Con-sultation.'<sup>219</sup> These statutes are retained in England in 'The Statutes Revised.'<sup>220</sup>

Before the close of that session, to-wit: on the 14th of June, writs had been issued directing the sheriffs to return knights to appear at Westminster on or before the 15th of July.<sup>221</sup> In this parliament business of a financial character was transacted;<sup>222</sup> and the subjoined statutes<sup>223</sup> were enacted. The king "at the same time, by an act done by himself in his private council," "banished the Jews from England; the safe conduct granted them on their departure is dated on the 27th of July."<sup>224</sup>

<sup>212</sup> 1 Spence's Eq., p. 332, note (d.)

<sup>213</sup> It was summoned for Jan. 13, and sat until Feb. 14. 2 Stubbs's Const. Hist., ch. 14, p. 121.

<sup>214</sup> His divorce, in 1283, from his first wife, was sanctioned by the pope in 1289. *Id.*, p. 121, note 2.

<sup>215</sup> Stubbs's Select Charters, p. 466; 2 Const. Hist., ch. 14, p. 121.

<sup>216</sup> 1 Stat. of the Realm, 106; Select Charters, p. 468; 2 Inst., 500.

<sup>217</sup> 2 Stubbs's Const. Hist., ch. 14, p. 122.

<sup>218</sup> 2 Inst., 494; 1 Stat. of the Realm, 107.

<sup>219</sup> *Id.*, 108. 'Modus levandi fines' is in *Id.*, 214, and 2 Inst., 508.

<sup>220</sup> Edi. 1870, vol. I, p. 77 to 82.

<sup>221</sup> Select Charters, p. 467.

<sup>222</sup> 2 Stubbs's Const. Hist., ch. 14, p. 122.

<sup>223</sup> 'The statute of persons vouched to warranty who are present.' 1 Stat. of the Realm, pp. 108, 109; 'Statute of Waste, *Id.*, pp. 109, 110; 'Statute of defending right,' *Id.*, 110; 'Statute of writs for making inquisitions of lands to be put in mortmain,' *Id.*, 111; and 'Statute of amortising lands,' *Id.*, 111.

<sup>224</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 122, 123. For 'Statutum de Judaismo,' there may be reference to 1 Stat. of the Realm, 221, and 2 Inst., 506. As to the *wicked* conduct in England to the Jews, see *Id.*, pp. 506, 507, 508; 2 Turner's Engl., ch. 2, p. 112, and p. 114 to 121; 3 Lingard's Engl., ch. 3, pp. 253, 254; Green's Short Hist., ch. 4, § 5, p. 224. Though Edw. I "bought the grant of a fifteenth from clergy and laity by consenting to drive the Jews from his realm," yet Mr. Green says

The king was deprived by death, in 1290, of his queen<sup>225</sup> and his treasurer;<sup>226</sup> his chancellor was soon to follow.

*William de Marchia*, to whom the Great Seal was delivered Feb. 24, 1290, by Bishop *Burnel*, the chancellor, was then merely an officer of the wardrobe, a usual or appropriate place for depositing the seal. He was promoted to the office of treasurer at the end of the same year.<sup>227</sup>

One of Bishop *Burnel's* last acts was his attendance as chancellor at Norham, in 1291, when King Edward acted as arbitrator between the competitors for the crown of Scotland.<sup>228</sup> The bishop died Octo. 25, 1292, at Berwick upon Tweed.<sup>229</sup> He has the reputation of an active and a wise minister. Mr. Foss observes that "no chancellor before him had ever held the Seal so long or retained so uninterruptedly his sovereign's confidence;" and that his distinction is well merited from the wisdom of his counsels and the zeal and assiduity with which he aided the king's efforts in the improvement of the law.<sup>230</sup>

"no share of the animosities which accompanied this expulsion can fall upon the king, for he not only suffered the fugitives to take their personal wealth with them, but punished with the halter those who plundered them at sea. But the expulsion was none the less cruel. Of the sixteen thousand who preferred exile to apostacy, few reached the shores of France. Many were wrecked, others robbed and flung overboard." 1 Green's Hist. of Engl. Peop., book 3, ch. 4, pp. 340, 341.

<sup>225</sup> On her way to join the king in Scotland, she was "seized with a dangerous autumnal fever at Herdby, near Grantham, in Lincoln county; she expired Nov. 29, in the 47th year of her age. Edward instantly turned southward; he was, 'during thirteen days, in the progress of the royal funeral from Grantham to Westminster.' Queen Eleanor was buried at the feet of her father-in-law. Her elegant statue, reclining on a tomb of grey Petworth marble, was cast in bronze, not by Peter

Cavalini (mentioned in Walpole's *Anecdotes of Painters*, vol. 1, p. 29, *et seq.*; of edi. 1786), but by Torelli, otherwise called Master William, the Florentine. To cast this statue, he built his furnace in St. Margaret's church yard. Miss Strickland's *Queens of England*, vol. 2, pp. 103, 104, of Phila. edi. 1857.

Mr. Stubbs says of Edward, 'The death of his wife, in Nov., 1290, may have contributed to sour him, and must have robbed him of a faithful and gentle counsellor.' 2 Const. Hist., ch. 14, p. 124.

<sup>226</sup> As stated in § 12, p. 396, *John de Kirkeby* died March 26, 1290.

<sup>227</sup> Foss's Biogr. Jurid.

<sup>228</sup> 3 Lingard's Engl., ch. 3, p. 206, *et seq.*

<sup>229</sup> 1 Roll's abr., tit. *Chancellor*, p. 385, No. 3; Foss's Biogr. Jurid. His body was removed to Wales, and buried there. *Id.*

<sup>230</sup> *Id.* Wiliam de Marchia was elected Burnel's successor in the bishopric of Bath and Wells, Jan. 26, 1293, being a canon of the latter cathedral at the time.

On Bishop *Burnel's* death, the Great Seal was delivered, under *William de Hamilton's*<sup>231</sup> seal, into the king's wardrobe; and the record states that he sealed the writs therewith before accompanying the chancellor's remains to Wells as one of his executors.<sup>232</sup> The delivery into the king's wardrobe, under *William de Hamilton's* seal, was to *Walter de Langton*,<sup>233</sup> as custos of the wardrobe.

*John de Langton* (mentioned in § 17, p. 409) was appointed chancellor December 17, 1292,<sup>234</sup> and pursued the prudent and sagacious course of Bishop Burnel, his predecessor.

*William de Marchia* continued treasurer during several years—probably until Sept. 28, 1295.<sup>235</sup> *Walter de Langton* was then raised to the treasurership; and in the following February was elected bishop of Coventry and Lichfield, still retaining the office of treasurer.<sup>236</sup>

Although possessing the king's confidence and favour, his integrity and boldness in correcting the insolence of *Peter de Gaveston* and Prince Edward's other servants, and restraining their expenses, occasioned him much trouble and persecution. In 1301 he was charged with such heinous crimes by "Sir John Lovetot (as adultery, simony and homicide) that the king was obliged to dismiss him till he had purged himself. For this he was compelled to take a journey to Rome; where, after great cost, he succeeded, and was not only reinstated in June, 1303, but received the strongest proof of his sovereign's conviction of his innocence, by being made principal executor of the king's will."<sup>237</sup>

<sup>231</sup> He had property in Cambridge. He was, in 8 Edw. I (1280), a justice itinerant, but for pleas of the forest only, in Hampshire and Wiltshire; and was, in 10 Edw. I, custos of the bishopric of Winchester and of the abbey of Hyde. He seems afterwards to have become a clerk in the chancery. There is one letter addressed to him as the king's vice-chancellor, dated Nov. 12, 1286 (7 Rep. Pub. Rec., App. xii, 242, 251); and another from the regent Edmund, earl of Cornwall, with directions relating to the chancery. Foss's Biogr. Jurid.

<sup>232</sup> 1 Roll's abr., tit. Chancellor, p. 385, No. 3. He was made, in 1292, arch-deacon of the West Riding of York;

and in Dec., 1298, dean of York; he was also dean of the church of St. Burian, in Cornwall. *Id.*

<sup>233</sup> He was born at West Langton, in Leicester county, and was nephew of William de Langton, dean of York. He was himself dean of the free chapel at Bruges, a canon of Lichfield, and one of the pope's chaplains. *Id.*

<sup>234</sup> In 1297 he received the arch-deaconry of Canterbury, then a very valuable preferment.

<sup>235</sup> He was bishop of Bath and Wells until his death. He died June 11, 1302, and was buried at Wells. *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> Foss's Biogr. Jurid.; 2 Stubbs's Const. Hist., ch. 14, pp. 150, 151.

20. *Justices and Barons in 1291, 1292 and 1293; including those named in year books of 20 & 21, and 21 & 22 Edw. I.*

*Peter de Leicester* and *William de Carleton*, whose duties as justices of the Jews terminated with the expulsion of the Jews, were, in 1291, appointed regular barons of the Exchequer.<sup>238</sup>

In recent publications<sup>239</sup> may be seen in one volume reports of "pleas before *John de Berewike* and his companions, justices in eyre, at Hereford, in the Octaves of Trinity," in 20 Edw. I;<sup>240</sup> reports of "pleas in the Salop iter XX Edward I, the justices being *John de Berewike*, *William de Bereford*, *Hugh de Cave*, *John de Lythegrenes* and *Thomas de Normanvill*;"<sup>241</sup> reports of "pleas in the bench, after Christmas, in the 20th year of the reign of the king;"<sup>242</sup> and reports of "pleas in the Stafford iter XXI Edw. I, the justices being *John de Berewike*, *Thomas de Normanville*, *William de Bereford*, *John de Lithegreyns* and *Hugh de Cave*."<sup>243</sup>

And in another volume, reports of "pleas in the bench in Easter Term, in the 21st year of the reign of King Edward;"<sup>244</sup> "pleas in the bench after Pentecost, in the 21st year of the reign of the king;"<sup>245</sup> and "pleas at London, in the Middlesex iter after the feast of Saint Michael," in 22 Edw. I.<sup>246</sup> The justices sat in the Strand, not far from Temple Bar.<sup>247</sup>

<sup>238</sup> Foss's *Biogr. Jurid.* The king, in 25 Edw. I, employed *William de Carleton*, with two others, to collect a sum of ten thousand pounds from the merchants at Antwerp. (Rot. Parl. i, 169, 194.) *Id.*

<sup>239</sup> "By the authority of the Lord's Commissioners of Her Majesty's Treasury, under the direction of the Master of the Rolls."

<sup>240</sup> Year books, 20 and 21 Edw. I, (London, 1866,) p. 1 to 207.

<sup>241</sup> *Id.*, p. 209 to 293.

<sup>242</sup> *Id.*, p. 296 to 369.

<sup>243</sup> *Id.*, p. 371 to 479.

<sup>244</sup> Year books, 21 and 22 Edw. I, (London, 1873,) p. 1 to 151.

<sup>245</sup> *Id.*, p. 153 to 297.

<sup>246</sup> *Id.*, p. 399 to 641.

<sup>247</sup> In Mr. Horwood's preface to *Id.*, it is said: "In the *Liber Custumarum* (p. 293, ed. Riley) we find under the date, 22 Edw. I, this entry in Latin: 'In this year, in the Quinzein of St. Martin, the itinerant justices sat outside London, at the Stone Cross in the house of the Bishop of Coventry, in the county of Middlesex.' *William de Langton*, afterwards Bishop of Coventry and Lichfield (sometimes called Bishop of Chester), and for sometime the King's Treasurer, built the house in the Strand, called Chester House, and it was at his house that the justices sat. It was near the Maypole on the Strand. (See Blount's *Fragmenta Antiquitatis*, p. 109, 4to ed'n.)"

Of the justices thus named in the Year Books of 20 and 21 Edw. I, some information is derived through Mr. Foss. The high character of *John de Berewyk*<sup>248</sup> is evidenced by his being one of the executors of Queen Eleanor (Abb. Rot. Orig. i, 80). In all the circuits in which he was named among justices itinerant from 20 Edw. I (1292), to nearly the end of the reign, he was invariably at their head. He was summoned also among the judges to parliament during the same interval, and on one occasion was appointed to receive and answer all petitions from Ireland and Guernsey which could be answered without reference to the king (Parl. Writs, i, 468).<sup>249</sup>

*William de Bereford* was a justice of the Common Pleas. Prynné (on 4 Inst., 20) gives two commissions to him in conjunction with Robert de Hertford and *Robert Malet*, to enquire as to a murder in 20 Edw. I; and in the parliament that met after Easter in the following year, Eustace de Parles and John, his brother, were convicted of insulting 'William de Bereford, a justice of our lord the king,' in the Aula Regis, by imputing to him corrupt and improper conduct during his iter into Staffordshire; and they were imprisoned in the Tower for their contempt."<sup>250</sup>

*Hugh de Cave*<sup>251</sup> was, in 21 Edw. I (1293), the last named of four justices itinerant for Surrey county, and was among the justices

<sup>248</sup> He was, in 7 Edw. I, appointed custos of the vacant abbey of St. Edmund; and, in the next year, had a similar grant over the bishopric of Lincoln. (Abb. Rot., Orig. i, 33, 35.) In 11 Edw. I, he was assessor in Dorsetshire of the thirtieth, granted by the counties south of Trent. (Parl. Writs i, 13.) In 13 Edw. I, he was keeper of the queen's gold (Madox i, 361); and in 18 Edw. I, he delivered into the wardrobe the Roll of peace and concord between the chancellor and scholars of the university of Oxford, and the mayor and burgesses of that city. (Rot. Parl. i, 33.) Biogr. Jurid.

<sup>249</sup> *Id.* That he acted as one of the justices itinerant under Edw. II, there

can be little doubt, as he is summoned among them to the parliaments of the first two years of that reign. (Parl. Writs ii, 536.) He died in 6 Edw. II, 1312, and was possessed of manors and other lands in the counties of Essex, Hants, Wilts, Norfolk and Suffolk. Biogr. Jurid.

<sup>250</sup> "He continued to act during the remainder of the reign, and was one of those selected to treat with the Scots in 33 Edw. I, and was placed in the commission of trailbaston for the northern counties in the last year of the reign." Biogr. Jurid.

<sup>251</sup> In 5 Edw. I, clerk to Ralph de Hengham, chief justice of the King's Bench. (Dugdale's Orig., 94.) *Id.*

summoned to the parliament of August, 23 Edw. I.<sup>252</sup>

*John de Lythegrenes*<sup>253</sup> was, in 1293, a justice itinerant for Surrey.<sup>254</sup>

*Thomas de Normanwill*<sup>255</sup> was, in 1286, one of the justices itinerant for pleas of the forest only; but was a regular justice itinerant in 1292 and 1293. He died in 1295.<sup>256</sup>

In 20 and 21 Edw. I, there seem to have been appointments also of *Hugh de Cressingham*,<sup>257</sup> *Thomas de Fisheburn*,<sup>258</sup> *Peter Heym*<sup>259</sup> and *William de Ormesby*, as justices itinerant. *Hugh de Cressingham* was, in 1292 and the three next years, at the head of the justices itinerant for the northern counties.<sup>260</sup> *Thomas de Fisheburn*

<sup>252</sup> (Parl. Writs i, 29.) He and his brother had a grant of land at Coke-frueddinge, in Staffordshire, from Alwyn de Norton and his wife. (Abb. Placit., 213.) *Id.*

<sup>253</sup> Was a native of, or established as an advocate in, one of the northern counties; he being mentioned so early as 52 Hen. III, as employed on the king's part in a *quo warranto* against the mayor of New Castle upon Tyne. (Abb. Placit., 170.) He was appointed, in 8 Edw. I, sheriff of Yorkshire, and retained that office for five years; he is noticed in the parliament, of 18 Edw. I, as a commissioner to enquire into the liberties claimed by the priors of Tyne-mouth and Carlisle. (Rot. Parl. i, 29, 38.) Foss's Biogr. Jurid.

<sup>254</sup> Two years afterwards he was king's escheator beyond the Trent; in the next year he exchanged this escheatorship for that on the south side of the Trent. In 28 Edw. I, and two years afterwards, he was employed in the perambulation of the forests of the northern counties (Parl. Writs i. 397-8), being, in the intervening year, a justice itinerant in Kent county. In January, 1301, he is named in the Statute *de Escaeteribus* as one of the king's council. *Id.*

<sup>255</sup> Of a Yorkshire family. An assize in that county, in 53 Hen. III (1269), was paid for by Gerard, and Margery, his

wife, who were, perhaps, the parents of Thomas. (Excerpt. e Rot. Fin. ii, 491.) He is called '*Senescallus regis*,' in the king's grant to him, in 4 Edw. I, of the custody of the castle of Bamburgh; this title is continued till 10 Edw. I, when he is appointed to like duties under the designation of king's escheator beyond Trent. He retained the latter office till 23 Edw. I, except that he exchanged it for a short time for the southern escheatorship. It was, in 11 Edw. I, that he received and obeyed the king's commands to remove the sheriff of Cumberland. (Year Book, fo. 12.) *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> Son of William de Cressingham, an officer of the Exchequer. In 18 Edw. I, Hugh is called seneschal of the queen (Abb. Placit. i, 30, 33); in 1292, he was appointed, with two others, to investigate and audit the debts due to Hen. III. Foss's Biogr. Jurid.

<sup>258</sup> Probably son of Ralph de Fisheburn, mentioned in ch. 15, § 33.

<sup>259</sup> Perhaps son of Stephen Heym, mentioned in § 3, p. 380.

<sup>260</sup> He was a canon of St. Paul's, and held at least nine parsonages. He is called 'an insatiable pluralist;' there is ascribed to him an immoderate passion for hoarding money. (Archologis xxv, 608.) He was appointed, by Edw. I, treasurer of Scotland in 1296, and



was appointed justice itinerant in 21 Edw. I.<sup>261</sup> *Peter Heym* was appointed, in 20 Edw. I, a justice to take assizes in divers counties.<sup>262</sup> And *William de Ormesby* acted as a justice itinerant in the northern counties in both years (20 and 21 Edw. I).<sup>263</sup>

*John Lovel*,<sup>264</sup> *William de Mortimer* and *John Wogan*<sup>265</sup> were also justices itinerant for northern counties in 20 Edw. I (1292). *Lovel* is introduced two years afterwards into Dugdale's list as a judge of the King's Bench.<sup>266</sup>

Of *Peter Mallore*,<sup>267</sup> who was raised to the bench of the Common Pleas and sat there for above seventeen years, from 1292 to 1309, there is particular notice in § 30.

21. *Of the parliaments in 1293 and the statutes which they passed; circuits of judges; and regulation of juries. Names of justices assigned to circuits.*

"The year 1293 (21 Edw. I) had two parliaments, one after Easter,

made himself hateful to the Scots. They called him '*non thesaurarium sed truyturarium regis.*' In 1297 he joined the earl of Surrey in leading the royal army to Sterling, and when Wallace had drawn up his army on the other bank of the river Forth, the English forces were, by Cressingham's rashness, led over the bridge, and terribly defeated, he being among the first who fell. He held the town of Hendon, and land in Finchley, in Middlesex, with the manor of Coulunge, in Suffolk. *Id.*

<sup>261</sup> Assizes taken before him in Cumberland, in the reign of Edw. I, are referred to in 2 Edw. II. (Abb. Placit., 307, 309.) *Id.*

<sup>262</sup> And his pleas are recorded in 23 Edw. I. (Abb. Rot. Orig. i, 92.) *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> Had the living of Yling, in the diocese of London, in 18 Edw. I; his parishioners made complaints against him to parliament for undue severity. (Rot. Parl. i, 60.) Foss's Biogr. Jurid.

<sup>265</sup> A referee, in conjunction with Hugo de Cressingham, of a dispute

between the queen and William de Valence and his wife, the result of which was stated to the parliament of 18 Edw. I. At this parliament, to Cressingham's complaint, that Wogan entered the queen's court at Haverford, and impeded the proceedings, Wogan answered that he did so only to prevent one of the tenants from doing fealty to the queen for a tenement he held of William de Valence; the case was referred for enquiry, but the decision does not appear. (Rot. Parl. i, 31, 33.) He was appointed Chief Justice of Ireland Octo. 18, 1295, and continued in that post for the remainder of this and the first twelve years of the next reign. *Id.*

<sup>266</sup> He seems to have held that place in 23 and 28 Edw. I, but in the intervening years is called clerk of the council, and appears among those known to be clerks in chancery. In 26 and 28 Edw. I, he was one of the justices appointed to perambulate the forests. *Id.*

<sup>267</sup> Probably a descendant of Gislebert Mallore, one of the Conqueror's fol-

the other after Michaelmas, in the first of which a statute was passed to define the circuits of the judges;<sup>268</sup> and in the second, an edict providing for the regulation of juries."<sup>269</sup>—The first "divided the kingdom into four circuits, each of which had two justices assigned to it: these were to take the assizes as before, but without a restriction of terms, and were to be on duty throughout the year."<sup>270</sup>

Of the eight justices assigned under this statute, one was *William Howard*;<sup>271</sup> another was *William Inge*.<sup>272</sup> Four others were *John de Batesford*,<sup>273</sup> *John de Bosco*,<sup>274</sup> *John de Insula*,<sup>275</sup> and *Gilbert de Kirkeby*.<sup>276</sup> *Adam de Crokedayk* was one of the two appointed for

lowers, and of Anchetil Mallore, employed in the reign of Henry II. Peter married Matilda, daughter of Stephen de Bayeux, and widow of Elyus de Rabayne. *Id.*

<sup>268</sup> 'Statute of the justices of assize,' 1 Stat. of the Realm, p. 112. Middlesex was not embraced in any of the four circuits: the statute provided that "the assizes, juries, and inquests of the county of Middlesex shall be taken before the justices of the Bench." This statute is retained in England in 'Statutes Revised' edi. 1870, pp. 82, 83.

<sup>269</sup> 'The statute of persons to be put in assizes and juries,' is in 1 Stat. of the Realm, p. 113.

<sup>270</sup> 2 Stubbs's Const. Hist., ch. 14, p. 124, and ch. 15, p. 271. Besides the statutes mentioned in the text, there was enacted, in 1293, "The statute of trespasses in parks." 1 Stat. of the Realm, 111, 112. In the margin of 3 Inst., 143, is mentioned '*statut. de conspiratoribus*,' anno 21 E. I. 'Statute concerning Conspirators' is in 1 Stat. of the Realm, 216.

<sup>271</sup> Ancestor of the Dukes of Norfolk. His circuit embraced the northern counties. He was Octo. 11, 1297, constituted a judge of the Common Pleas; and, in 33 and 35 Edw. I, was one of the judges named in commissions of trailbaston. Foss's Biogr. Jurid.

<sup>272</sup> An advocate of great eminence;

the king's attorney as early as 15 Edw. I (1289), being then retained to prosecute and defend for the king at a salary of £20 a year. In 20 Edw. I, he is noticed as the king's sergeant at law. *Id.*

In the circuit to which he was assigned, he continued a justice till the end of the reign. He was one of five justices of trailbaston named for Norfolk and Suffolk April 6, 1305; and again in Feb., 1307. *Id.*

<sup>273</sup> He was the fourth of the justices of Trailbaston, nominated Feb. 18, 1307, for ten of the midland counties. Foss's Biogr. Jurid.

<sup>274</sup> An advocate employed in 18 Edw. I, on the king's part. In 21 Edw. I, he claimed, with his brothers in law, the manors of Toleshunt, Tregoz and Blunteshale, in Essex, as son of Lucy, one of the four sisters of Nicholas de Tregoz. He was among the judges summoned to parliament in 23 and 25 Edw. I; but his career had a bad termination. *Id.*

<sup>275</sup> An advocate; so early as, 1290, he was heard on the king's part in two suits before parliament. *Id.*

<sup>276</sup> He had property in Hinton and Brackley in Northampton, and was sheriff of that county for 2 years, commencing 2 Edw. I. To him and *John de Insula* were assigned Kent and eight other counties. *Id.*

Lincoln and nine other counties.<sup>277</sup> *Henry de Eynefeld* was one of the two for Cornwall and nine other counties.<sup>278</sup>

22. *Parliament of 1294: acquisition of the right of representation; acknowledgment of the need of consent to taxation. Steps taken in 1295 for Great Council in the summer and Parliament in the fall. Of justices and barons in 1295, 1296 and 1297.*

The "parliamentary writs" in 1294 are published by Mr. Stubbs.<sup>279</sup>

"To this parliament were summoned not only the magnates but the knights of the shires. The writs were issued on the 8th of October, the meeting was to be at Westminster, on the 12th of November; each sheriff was to return two knights, and by a second writ issued on the 9th of October, two more."—"The events of the year, although they show unconstitutional violence on the king's part, and somewhat of panic on the part of the nation, mark the acquisition by the clergy and the counties of the right of representation in their proper assemblies, and an acknowledgment of the need of their consent to taxation, two steps which were never revoked."<sup>280</sup>

In 1295 there were steps<sup>281</sup> for a great council; in which there were "no representatives of the commons."—"This assembly met and dispatched the *judicial* business on the 15th of August." There were also steps for a parliament in the fall.<sup>282</sup>

"On the 30th of September and on the first of October" the king "issued writs for a parliament to meet on the 13th of November at Winchester."—"This was to be a modern assembly, bearing in its constitution evidence of the principle by which the summons was dictated, and serving as a pattern for all future assemblies of the nation."<sup>283</sup>

<sup>277</sup> He was among the justices summoned to several parliaments. He was, in 25 Edw. I, assigned to assess and collect the ninth in northern counties; and appointed, three years afterwards, to perambulate the forests of York and Cumberland counties. He was still engaged in legal employments in 31 and 33 Edw. I; in the latter year he died, possessed of considerable property in Cumberland. *Id.*

<sup>278</sup> And was summoned among the judges to parliament till 25 Edw. I. *Id.*

<sup>279</sup> In *Select Charters*, p. 469 to 472.

<sup>280</sup> 2 Stubbs's *Const. Hist.*, ch. 14, p. 127.

<sup>281</sup> *Select Charters*, p. 472 to 477.

<sup>282</sup> *Id.*

<sup>283</sup> 2 Stubbs's *Const. Hist.*, ch. 14, pp. 128, 129; Co. Lit. 109 b; Turner's *Hist. of Anglo-Saxons*, book 8, ch. 4, pp. 166, 167, and 183, of vol. 3, ed. 1852. 'The statute of breaking prisons' in 23 Edw. I (1295), is in 1 Stat. of the Realm, 113; and in 1 Revised Statutes, ed. 1870, pp. 82, 83.

Now *John Lovel* (mentioned in § 20, p. 421) and *Gilbert de Roubury*<sup>284</sup> were judges of the King's Bench; *Roger le Brabazon* (mentioned in § 18, p. 413) was its chief justice.<sup>285</sup>

*Robert de Retford*<sup>286</sup> was first summoned to parliament among the judges in August, 1295 (23 Edw. I); he was a justice itinerant at Norwich and at Dunstable in the next year.<sup>287</sup>

*John de Insula* (mentioned in § 21, p. 422) was on Octo. 21 (1295), admitted as one of the barons of the Exchequer.<sup>288</sup>

In 24 Edw. I (1296), *William de Ormesby* (mentioned in § 20, p. 421) was appointed a judge of the King's Bench. On the reduction of Scotland he was constituted justiciary of that country; and excited odium by the rigour with which he extorted penalties. In the following year, while holding his court at Scone, he was surprised by Wallace, and barely escaped. On his return to England he resumed his duties in the King's Bench<sup>289</sup>

*William Howard* (mentioned in § 21) was constituted a judge of the Common Pleas Octo. 11, 1297.

*Roger de Hegham*<sup>290</sup> is at the end of 25 and 26 Edw. I (1297), mentioned as a baron of the Exchequer. To him, in conjunction with *Walter of Gloucester*<sup>291</sup> and *John of Sandale*,<sup>292</sup> is directed the

<sup>284</sup> During the remainder of the reign he had a prominent part in the administration of justice. Summoned with his brethren to parliament, he was frequently selected as one of the receivers of petitions. In the statute of champerty, 33 Edw. I, he is mentioned as clerk of the king's council, and as recommending the writ of conspiracy. Foss's Biogr. Jurid.

<sup>285</sup> He presided in the court till the end of the reign. *Id.*

<sup>286</sup> Whose grandfather was so called from a town in Nottinghamshire. *Id.*

<sup>287</sup> His attendance in parliament as a justice is noted till the end of the reign; in Feb., 1307, he was among the justices of trailbaston for the home counties. *Id.*

<sup>288</sup> In 33 and 35 Edw. I, he was one of

the justices of trailbaston. Foss's Biogr. Jurid.

<sup>289</sup> *Id.* He is mentioned as such till the end of the reign, and as chief of the justices of trailbaston for Norfolk and Suffolk counties in 1305. *Id.*

<sup>290</sup> Of a Kentish family. In 21 Edw. I, he acted on the king's part on a *quo warranto* at York. In 25 and 26 Edw. I, he assessed the tallage of London, and in the latter year was appointed to perambulate the forests of five counties. *Id.*

<sup>291</sup> One of the canons of Beverley. He was an officer of the Exchequer, and in 22 Edw. I, was entrusted with the sheriffalty of Dorset and Somerset, which he held for five years. He then was appointed to visit the seaports to

"writ for the collection of talliage," dated at "Dunfermely, *vi die Februarii*, anno, &c., xxxii." <sup>293</sup>

23. *Of the struggle for 80 years from the 'parliament of Runnymede;' of the statute of 25 Edw. I. (1297), confirming the charters; of the statute of 27 E. I. called Ordinatio de libertatibus perquirendis; and of the articles in 28 Edw. I. (1300), called 'Articuli super chartas,' with Lord Coke's observations thereon.*

The great charter (of Runnymede) closes one epoch and begins another.

"On the one hand it is the united act of a nation that has been learning union; the enunciation of rights and liberties, the needs and uses of which have been taught by long years of training, and by a short, but bitter struggle; on the other hand it is the watchword of a new political party, the starting point of a new contest. For eighty years from the 'parliament of Runnymede,' <sup>294</sup> the history of England

enquire into the concealment of the king's customs on wool, &c. In 28 Edw. I, he was a perambulator of the forests in Hants and Wilts, and about the same time was selected as one of the king's escheators, acting in the north till the end of the reign. *Id.*

<sup>292</sup> He held an office connected with the Treasury or Exchequer in 30 Edw. I (1302), when he is mentioned as receiving a crown for Queen Margaret. In the following year he and *John de Droghensford* are called treasurers. He was likewise one of those appointed to assess the tallage in London and Middlesex. *Id.*

<sup>293</sup> Select Charters, p. 491. *John de Sandale* became chamberlain of Scotland in 33 Edw. I, and held this office till the end of the reign, being at the same time commissioned to treat with the Scots on the affairs of that country. In 34 Edw. I, William de Briwes having grossly insulted *Roger de Hegham* (after a judgment), was ordered to make an apology in full court, and to be committed to the Tower, there to remain at the king's will. In the last year of this

reign, *Roger de Hegham* acted as a justice of assize; and was a justice of trailbaston for home counties. In 35 Edw. I, *Walter, of Gloucester*, was a commissioner of array in Glamorgan, and paymaster of the levies there. *Id.*

<sup>294</sup> Mr. Spence supposes that the term 'Parliament' is first met with in 42 Hen. III; and cites Rep. of Lords Comm., 1823, p. 99, 169, 174, &c. I Spence's Eq., 328, notes (c) and (d). Mr. Stubbs observes that the name of *parliament* "is used by Otto Morena of the diet or parliament of Roncaglia, held by Frederick I, in 1154" (Leibnitz, Scr. Rer. Brunswic. i, 809); and, in 1175, by Jordan Fantosme (Surtees Society, pp. 2-6, 15), who (p. 14) "describes a debate held by the king of Scots before engaging war in '*sun plenier parlement*;' and is first used in England by a contemporary writer in 1246; namely, by M. Paris, p. 696. He states, however, that in a record of 28 Hen. III (1244), there is mentioned the '*Parliamentum Runimedæ*.' I Const. Hist. of Engl., ch. 12, p. 477, note 1; *Id.*, ch. 13, p. 570, and note 2.

is the narrative of a struggle of the nation with the king, for the real enjoyment of the rights and liberties enunciated in the charter, or for the safeguards which experience shewed to be necessary for the maintenance of those rights. The struggle is continuous; the fortunes of parties alternate; the immediate object of contention varies from time to time; the wave of progress now advances far beyond the point at which it is to be finally arrested, now retires far below the point at which a new flow seems to be possible. And yet at each distinct epoch something is seen to be gained, something consolidated, something defined, something reorganized on a better principle.”<sup>295</sup>

Lord Coke states that many men had objected “that they ought not to contribute to the maintenance of the king’s wars out of the realm;” and therefore chapter 5 of 25 Edw. I was passed; and afterwards there were declaratory acts.<sup>296</sup>

In Mr. Stubbs’s volumes<sup>297</sup> is a statement (—which, though of considerable length, should be carefully read by a student of constitutional history—) of the events which led to the ‘*Confirmationes Chartarum de Libertatibus Angliæ et Forestæ*’<sup>298</sup> in 25 Edw. I (1297).<sup>299</sup> “The new articles are extant in two forms—

<sup>295</sup> 2 *Id.*, ch. 14, p. 1.

<sup>296</sup> “No man shall be compelled to go to the king’s wars out of his shire, but where necessity of sudden coming of strange enemies into the realm. No man shall be charged to give any wages either to the preparers or conveyers of soldiers, or to the soldiers, to go into Scotland, Gascoin or elsewhere; but that men of arms, hoblers and archers, chosen to go into the king’s service, out of England, shall be at the king’s wages from the day they depart out of the counties, where they were chosen, till they return.”

Which acts of parliament are but declarations of the ancient law of England. And, according to this ancient law, the commons after the said declaratory acts of parliament did, when this point concerning maintenance of wars out of England came in question, make their continual claim of their ancient freedom

and birthright; as in 1 H. V, and in 7 H. V, &c., the commons made protestation that they were not bound to the maintenance of war in Scotland, Ireland, Calais, France, Normandy, or other foreign parts, and caused their protestations to be entered into the parliament roll, where they yet remain; which, in effect, agreeth with that which, upon like occasion, was made in this parliament of 25 E. I.” 2 *Inst.*, 528.

<sup>297</sup> *Select Charters*, p. 477 to 484; 2 *Const. Hist.*, ch. 14, p. 130 to 141.

<sup>298</sup> 2 *Inst.*, 524.

<sup>299</sup> Mr. Stubbs, citing ‘*Statutes of the Realm* i, 114–119, and *Fœd.* i, 879, 880, says: “The charters were confirmed by *inspeximur* on the 12th” (of Octo., 1297); the king on the 5th of Nov., at Ghent, confirmed both the charters and the new articles.’ 2 *Const. Hist.*, ch. 14, p. 141.

"One is in French,<sup>300</sup> containing seven articles, attested by the regent and sealed with the Great Seal. The other is in Latin,<sup>301</sup> preserved by the annalist, Walter of Hemingburgh, containing six articles, and purporting to be sealed, not only by the king, but by the barons and bishops."<sup>302</sup>

"The French form is that in which the enactment became a permanent part of our law, by the exact terms of which Edward held himself bound, and beyond the letter of which he did not think himself in conscience obliged to act, in reference to either tallage or prisage."<sup>303</sup>

These articles are the summary of the advantages gained at the termination of the struggle of eighty-two years; and in words they amount to very little more than a re-insertion of the clauses omitted<sup>304</sup> from the great charters of John. But in reality they stand to these clauses in the relation of substance to shadow, of performance to promise. For the common consent of the nation in 1297, means not, as in 1215, the assent of a body which is conscious of its existence and common interest, but unable to enforce its demands, without proper machinery, continuity of precedent or defined arrangement of parts and functions, but the deliberate assent and consent of a parliament formed on strict principles of organization, summoned by distinct writs for distinct purposes—a well defined, and, for the time, completely organized expositor of the national will."<sup>305</sup>

The king returned to England in March, 1298;<sup>306</sup> after making with France a truce which soon became a permanent peace, cemented by a double marriage; "that of Edward himself (who was now a widower), with Margaret, Philip's sister, and that of the Prince of Wales with Isabella, daughter of that monarch."<sup>307</sup>

<sup>300</sup> 2 Inst., 524 to 531; 1 Statutes of the Realm, 124, 125; Select Charters, p. 484 to 487.

<sup>301</sup> Hemingb. ii, 152; 1 Statutes 125; 3 Lingard's Engl., ch. 3, p. 264, *note*; Select Charters, pp. 487, 488.

<sup>302</sup> 2 Stubbs's Const. Hist., ch. 14, p. 142; 2 Inst., 532 to 536.

<sup>303</sup> 2 Stubbs's Const. Hist., ch. 14, p. 143.

<sup>304</sup> See ch. 15, § 1, *ante*, p. 277; 3 Lingard's Engl., ch. 3, pp. 264, 265.

<sup>305</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 143, 144. "A statute concerning tallage," and "the sentence of the clergy given on the confirmation of the charters," are in 1 Stat. of the Realm,

p. 126. "The Great Charter of the liberties of England and of the Forest confirmed by King Edward in the twenty-fifth year of his reign, is in 1 Statutes Revised, ed. 1870, p. 84 to 95. Immediately after, it is "a statute concerning tallage." *Id.*, p. 96 to 98.

<sup>306</sup> In 1 Roll. abr., tit. *Chancellor*, p. 386, No. 6, is a statement from 'Rot. Finium M. 6,' of what was done with the Great Seal in 25 E. 1, when the king '*fuit paratus ad transfretandum in Flandriam*;' and a statement (from M. 15) of what was done with the seal '*sur return d'el roq.*'

<sup>307</sup> 2 Hume's Engl., ch. 13, p. 120; 2 Turner's Engl., ch. 2, p. 111, of ed.

In May, 1298 (26 Edw. I),<sup>308</sup> the earls claimed, as to the charters, reconfirmation of what was done when the king was on the continent. The claim was met then by a promise, and afterwards (April 2, 1299) by what is called the statute *de finibus levatis*.<sup>309</sup> Therein was a saving against which the lords inveighed; they pressed the king to confirm the charters absolutely; on the 31st of May (1299), confirmation was granted without the salvo.<sup>310</sup>

With reference to '27 E. I, *de libertatibus perquirendis*,' Lord Coke says:

"It is to be observed that where divers ancient statutes speak of the chancellor and of his lieutenant, it must of necessity be intended of such a lieutenant as the law doth allow of, and that cannot be of a deputy, for the chancellor cannot make a deputy but *locum tenens* is to be taken for one that holdeth the place, or hath equal authority of the chancellor, and that is *custos magni sigilli*."<sup>311</sup>

A parliament summoned for March 6, 1300 (28 Edw. I), passed (in addition to the charters) *Articuli super chartas*,<sup>312</sup> in 20 chapters, on each of which Lord Coke comments.

1825; 3 Lingard's Engl., ch. 3, p. 228 and p. 230; 2 Stubbs's Const. Hist., ch. 14, p. 148. Marquerite (in her 17th year) was married to Edward, who met her at Canterbury Sept. 8th, 1299. Miss Strickland's Queens of England, vol. 2, p. 112, of Phila. edi. 1857. Isabella, having been born in 1295, was but four years old when her name was included in the two-fold matrimonial treaty. *Id.*, p. 122. The Prince of Wales having been born April 25, 1284, was about eleven at the time of that treaty. *Id.*, pp. 98, 99.

<sup>308</sup> In this year was "a statute concerning the sheriff and his clerks." 1 Stat. of the Realm, 213.

<sup>309</sup> 1 Stat. of the Realm, 126; 2 Inst., 521; 1 Statutes Revised, p. 98 to 101. The words mentioned in 2 Stubbs's Const. Hist., ch. 14, p. 148, note 4, are '*Quos autem articulos supradictos firmiter et inviolabiliter observari volumus et teneri, volentes nihilominus quod perambulatio fiat, SALVIS SEMPER JURA-*

MENTO NOSTRO, JURÆ CORONÆ NOSTRÆ ET RATIONIBUS NOSTRIS ATQUE CALUMPNIIIS AC OMNIUM ALIORUM.'"

<sup>310</sup> In this meeting was passed 'a statute concerning false money.' *Id.*, (2 Stubbs) 148, note 5; 1 Stat. of the Realm, 131 to 135.

<sup>311</sup> 4 Inst., 88. In 1727 there was a discussion of the statute of 27 E. I, called *Ordinatio de libertatibus perquirendis*, wherein it is directed that inquests taken upon writs of *ad quod damnum* shall be certified to the chancellor or his deputy. Then (as to the word *deputy*), 4 Inst., 88, was cited in support of the view taken on p. 200 of 'Legal Judicature in Chancery.'

<sup>312</sup> 2 Inst., 537; 1 Stat. of the Realm, 136-141; Stubbs's Select Charters, pp. 483, 484; 2 Const. Hist., ch. 14, pp. 148, 149; 1 Statutes Revised, edi. 1870, p. 103 to 107. A statute of 28 Edw. I, 'for persons appealed,' is in 1 Stat. of the Realm, p. 141.



In his comments on ch. 1, Lord *Coke* mentions certain things "which have fair pretences" and yet "are most commonly hurtful to the commonwealth; the first of which is 'New Courts,' for commonly they tend to the grievous vexation and oppression of the subject, and not to that glorious end that at the first was pretended;" and the second is "new offices," which, "under pretence of the common good are exercised to the intolerable grievance of the subject." Then he speaks of justices of *trebaston* or *trailbaston*, so called (in respect of their precipitate proceedings from day to day, without such convenient leisure and time as common law allowed), for that their proceedings were as speedy and ready as one might draw a staff."<sup>313</sup>

"The mischief before" chapter 2 "was, that the insolency of the purveyors, bearing themselves so proudly under the great officers of the king's household, grew to that height that they would take what and how much as it pleased them, and many times where it might be least forborne or spared, and for others than for the king's household, and sometimes would pay nothing, and many times less than the true value, and many persons would make purveyance without any warrant at all; of these great grievances and losses without number, infinite damages, the subjects complained of at this parliament, and for restraining of the abuses of the purveyors and relief of the subjects this act of parliament was made."<sup>314</sup>

In expounding ch. 3,<sup>315</sup> *Ld. Coke* observes that "*particular jurisdictions derogating from the jurisdiction of the general courts of the common law are ever taken strictly.*"

Chapters 4, 5 and 6 are as follow:

4. "No common pleas shall be from henceforth holden in the exchequer, contrary to the form of the great charter."<sup>316</sup>

<sup>313</sup> 2 Inst., 540.

<sup>314</sup> 2 Inst., 543, 544.

<sup>315</sup> "Concerning the authority of stewards and marshals, and of such pleas as they may hold, and in what manner." 2 Inst., 547.

<sup>316</sup> "The Exchequer is an ancient court of record for the king's affairs, touching his rights and revenues of his crown, and for debts and duties and other things due to the king in the right

of his crown." 2 Inst., 551. In 1282, the king had to prohibit the treasurer and barons of the Exchequer from hearing common pleas, as contrary to the custom of the kingdom, except in cases which touched the king or the ministers of the Exchequer. 2 Stubbs's Const. Hist., ch. 15, p. 267. This was embodied in the statute of 1300. *Ld. Coke* says: "In three cases the court of Exchequer hath jurisdiction of common

5. "On the other part the king wills that the chancellor<sup>317</sup> and the justices of his bench<sup>318</sup> shall follow him,<sup>319</sup> so that he may have at all times near unto him, some sages of the law<sup>320</sup> which be able duly to order all such matters as shall come unto the court at all times when need shall require."

6. "There shall no writ from henceforth that toucheth the common law, go forth under any of the petty seals."<sup>321</sup>

pleas between common persons in personal actions only: 1. Where an officer or minister is one of the parties in any personal action, because that his absence in other courts may hinder the affairs of the king in his court of Exchequer. 2. Any man that is a prisoner of this court, or an accountant that is entered into his account, or any other that ought to have the like privilege of this court of Exchequer, shall not be sued in any personal action but in this court; and the reason is, because neither of these acts of parliament take away the privilege of any court; for then if the party privileged were sued in any other court, he should not, in respect of his privilege of the Exchequer, answer there; and, therefore, lest the party should be without remedy, he may commence his action personal against him in the Exchequer, for statutes must be so expounded, as there be no failure of justice. 3. He that is a farmer, or indebted to the king, for the king's more speedy satisfaction of his debt or duty, shall sue his debtor by a *quo minus* in the Exchequer." 2 Inst., 551.

<sup>317</sup> "The true causes wherefore the chancellor followed the king's court were first, that the Great Seal is *clavis regni*, and in the custody of the chancellor, and meet it was that the king should have the key of his kingdom about him. 2. That *curia cancellarie* was *officina justitie*; for, in those days, not only original writs *in regis cancellaria*, but all commandments upon any occasion for the safety of the realm, or the good government thereof, were by writs, and passed under the Great Seal; and there-

fore necessary in those days, that the chancellor, having the custody of the Great Seal, should be about the king at all times; and this is the cause that the court of chancery cannot be adjourned.

3. The style of the court of chancery is *coram domino rege in cancellaria*. But where some hath supposed that at the making of this statute the chancellor held a court of equity, and that the judges in this act named attended on the king to decide matter of law, and the chancellor attended on him to decide matter of equity, it is mainly opposed that at this time the chancellor had no court of equity, but only a court of record of ordinary jurisdiction, according to the course of the common law." 2 Inst., 552.

<sup>318</sup> "Albeit this court and the chancery became to have certain and settled places about one time, yet the returns of writs *coram rege* are still *coram nobis ubicunque fuerimus in Anglia*." *Id.*, 554.

<sup>319</sup> Implying further that the Exchequer which, in 1277, had been taken to Spreasbury, and, in 1299, to York, should remain at Westminster. 2 Stubbs's Const. Hist., ch. 15, p. 268, and note 2.

<sup>320</sup> "At this time Sir Roger Brabazon, knight, a man excellently learned in the laws of the realm, was chief justice of the king's bench, and three other learned judges, here called sages *de la ley*, were his companions." 2 Inst., 554.

<sup>321</sup> At the making of this statute the king had three seals: 1. *Magnum Sigillum*, "in the custody of the lord chancellor, or lord keeper of the great

After chapter VII<sup>322</sup> is the following:

VIII. The king hath granted unto his people that they shall have election of their sheriff in every shire (where the shrivalty is not of fee) if they list.<sup>323</sup>

seal." 2. *Parvum Sigillum*, the little or petit seal, after this time called the privy seal—"in the custody of the clerk of the privy seal, sometime called keeper of the privy seal, after called lord privy seal." 3. *Signettum*, the signet, "ever in the custody of the principal secretary." 2 Inst. 554, 556.

"This act saith not that all writs which concern the common law shall pass under the Great Seal; but no writ shall pass under the privy seal which touch the common law; for it is to be known that the courts of the king's bench and the common pleas had, at the making of this statute, several seals, whereby they sealed judicial writs: As the seal belonging to the court of king's bench is in the custody of the chief justice, and so likewise the seal belonging to the court of common pleas is in the custody of the chief justice of that court; and the seal belonging to the court of Exchequer is in the custody of the chancellor of that court."—"And these seals are incidents inseparable to the said courts for the sealing of all judicial writs, &c., which for administration of justice, distributive to all men, are respectively under the said seals, and without which the courts cannot administer justice." *Id.*, 555.

<sup>322</sup>As to the constable of the castle of Dover. After treating of a judgment in the court of common pleas for land within the cinque ports, *Ld. Coke* speaks of "a judgment given in the common pleas in a *præcipe* of lands that lie in any of the county palatines of Chester, Lancaster and Durham." He says,

"they are exempted from the jurisdiction of the king's courts, and within them are *jure regalia*, and plenary jurisdiction, and so known to the king's courts; for they take notice of all the counties of England, because they be immediate to them for direction of writs: and therefore *although the tenant doth admit the jurisdiction of the court in those cases, the judgment against him for many of such lands is void.*" 2 Inst., 557.

<sup>323</sup>Of ancient time, before the making of this act, such officers or ministers as were instituted either for preservation of the peace of the county, or for execution of justice, because it concerned all the subjects of that county, and they had a great interest in just and due exercises of their several places, were, by force of the king's writ in every several county, chosen in full or open county by the freeholders of that county: as before the institution of justices of peace there were *conservatores pacis* in every county, whose office (according to their names) was to conserve the king's peace, and to protect the obedient and innocent subjects from force and violence. These conservators, by the ancient common law, were, by force of the king's writ, chosen in full and open county *de probioribus et potentioribus comitatus*, &c., by the freeholders of the county; after which election so made and returned, then in that case the king directed a writ to the party so elected."—"Though the words be by the 'people,' yet ought the election to be by the freeholders of the county." 2 Inst., 558, 559.

Next are chapters IX,<sup>324</sup> X,<sup>325</sup> XI,<sup>326</sup> XII.<sup>327</sup> After which are the following:

XIII. And forasmuch as the king hath granted the election of sheriffs to the commons of the shire, the king wills that they shall choose such sheriffs that shall not charge them, and that they shall not put any officer in authority for rewards or bribes; and such as shall not lodge too oft in one place, nor with poor persons or men of religion.<sup>328</sup>

XIV. From henceforth the king wills that the bailiwicks and hundreds of the king, nor of other great lords of the land be not let to farm at over great sums, whereby the people are over charged by making contribution to such farms.<sup>329</sup>

XV. In summons and attachments in plea of land the summons and attachments from henceforth shall contain the term of fifteen days full at the least, according to the common law, if it be not in attachment of assizes taken in the king's presence, or of pleas before justices in eyre during the eyre.<sup>330</sup>

The remaining chapters are XVI,<sup>331</sup> XVII,<sup>332</sup> XVIII,<sup>333</sup> XIX<sup>334</sup> and XX.<sup>335</sup>

24. *Parliament in 1301 denied the jurisdiction assumed by the pope to adjudicate upon the king's temporal rights. In 1303 "writ of summons to a 'colloquium' of merchants." Of statutes in 33 34 and 35 Edw. I; especially the statute in 34 Edw. I, 'de tallagio non concedendo,' with Lord Coke's observations thereon; and on the 'Statute of Carlisle' in 35 Edw. I, called by Lord Coke 'Statutum de asportatis religiosorum.' By the king's command Piers Gaveston banished England.*

The writ issued in September, 1300, directed the return to the new

<sup>324</sup>As to who may be impannelled in inquests and juries. *Id.*, 560, 561.

<sup>325</sup>As to conspirators, false informers and evil procurers. *Id.*, 561, 562.

<sup>326</sup>As to maintenance. *Id.*, 562 to 565.

<sup>327</sup>As to distresses which are excessive or otherwise illegal. *Id.*, 565.

<sup>328</sup>2 Inst., 566. <sup>329</sup>*Id.*

<sup>330</sup>*Id.*, 567, 568.

<sup>331</sup>As to false returns, 2 Inst., 568, confirming ch. 39 of Westm. 2, cited in 7 Rob. Pract., ch. 20, p. 363.

<sup>332</sup>Against malefactors; directing that the statute of Westminster "be sent

again into every county, to be read and published four times in the year, and kept in every point as straightly as the two great charters." 2 Inst., 569, 570.

<sup>333</sup>For redress of wastes and destructions done by escheators or sub-escheators. *Id.*, 571.

<sup>334</sup>"Where the escheator or the sheriff shall seize other men's lands into the king's hands." Ld. Coke's observations on this statute and that of 29 Edw. I (1 Stat. of the Realm, pp. 142, 143), are in 2 Inst., 572 to 574.

<sup>335</sup>As to goldsmiths. 2 Inst., 574 to 579.

parliament in January, of such representatives, if they were alive, as were in attendance at the time of the request for a commission from which a report was now to be received. The universities of Oxford and Cambridge were ordered to send a number of lawyers to advise on the subject of debate. At Lincoln, Jan. 20, 1301, the king met the parliament. The barons petitioned for the removal of the treasurer, *Walter Langton*; and presented, through Henry of Keighley, knight of the shire of Lancaster, a bill of articles. An impression of the king's mind is derived from a letter of his published by Mr. Stubbs, and mentioned by him as never printed before 1875. The king again confirmed the charters; and yielded expressly, or with some modification, to nearly all the claims of the barons. They showed themselves ready to support the king in resisting a mandate of the pope. The answer of Feb. 12, 1301, was by seven earls and 97 barons.

"That the king shall not answer before the pope, or undergo judgment touching the rights of the kingdom of Scotland, or any other temporal rights; he shall not allow his rights to be brought into question, or send agents; the barons are bound by oath to maintain the rights of the crown, and they will not suffer him to comply with the mandate even were he to wish it."<sup>336</sup>

"*Apud Novum Castrum super Tynam viii die Maii anno regni nostri xxxi* (1303) was a "writ of summons to a colloquium of merchants."<sup>337</sup>

The subjoined were, in 33 Edw. I (1305),<sup>338</sup> and in 34 Edw. I (1306).<sup>339</sup>

From what is said in 2 Inst., 532, it appears that<sup>340</sup> the king had

<sup>336</sup>Select Charters, pp. 488, 489;  
2 Const. Hist., ch. 14, p. 150 to 153.  
'A Statute for Escheators,' passed in  
1300-1, is in 1 'Statutes Revised' edi.  
1870, p. 108 to 110.

<sup>337</sup>Select Charters, p. 490.

<sup>338</sup>'An ordinance for inquests.' 1 Stat.  
of the Realm, 143; 'An ordinance of  
the forest,' *Id.*, p. 144; 'An ordinance  
concerning conspirators,' *Id.*, p. 145;  
1 Statutes Revised edi. 1870, pp. 112,

113. 'A statute allowing protections,'  
said to be in 33 Edw. I, is in 1 Stat. of  
the Realm, p. 117.

<sup>339</sup>The statute of joint tenants. 1  
Stat. of the Realm, p. 145 to 147;  
1 Statutes Revised, edi. 1870, p. 112.  
'An ordinance of the forest' is in 1 Stat.  
of the Realm, p. 147 to 149.

<sup>340</sup>After the writ issued at Dunfer-  
melyn, Feb. 6, 32 Edw. I. Select Char-  
ters, pp. 491, 492.

taken a tallage without assent of parliament; and there was "great murmuring and discontentment among the commons;" and "for a perpetual and a constant law," there was made, in 34 Edw. I, the statute *de tallagio non concedendo*;<sup>341</sup> which has the following important chapters:

No tallage or aid shall be taken or levied by us or our heirs in our realm without the good will and assent of archbishops, bishops, earls, barons, knights, burgesses and other freemen of the land.<sup>342</sup>

II. No officer of ours, or of our heirs, shall take corn, leather, cattle, or any other goods, of any manner of person, without the good will and assent of the party to whom the goods belonged.<sup>343</sup>

Then follow chapters III<sup>344</sup> and IV, the latter of which, Ld. Coke observes, "containeth a restitution general to the subjects of all their laws, liberties, and free customs, as freely and wholly as at any time before, in the better and fuller manner, they used to have the same, and this doth not only extend to *Magna Charta* and *Charta de Foresta*, but to all other laws, liberties or freedoms and free customs whatsoever."<sup>345</sup> Chapter V has this comprehensive pardon:<sup>346</sup>

<sup>341</sup> 2 Inst., 532. "*Tallagium*, or *Tailagium*, cometh of the French word *tailer*, to share or cut out a part, and metaphorically is taken when the king or any other hath a share or part of the value of the man's goods or chattels, or a share or part of the annual revenue of his lands, or puts any charge or burthen upon another." *Id.* 533.

<sup>342</sup> As much as to say, that no subsidy, task, tenth, fifteenth imposition, or other aid or charge whatsoever shall, by the king or his heirs, be put or levied without the common council of the realm, that is by the will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and others of the counties, that is to say, by grant and common assent in parliament. Within this act are all new offices erected with new fees, for that is a tallage put upon the subject, which cannot be done without common assent by act of parlia-

ment." 2 Inst., 533.

<sup>343</sup> 2 Inst., 534.

<sup>344</sup> Against taking by occasion of male-tot. *Id.*

<sup>345</sup> *Id.*, 535.

<sup>346</sup> "If you compare our English histories with this act of parliament, the old saying shall be verified that records of parliament are the truest histories. Although the king had conceived a deep displeasure against the constable, marshal, and others of the nobility, gentry and commons of the realm, for denying of that which he so much desired, yet for that they stood in defence of their laws, liberties and free customs, the king, who (as Sir *William Herle*, chief justice of the common pleas, who lived in his time, and served him said,) was the wisest king that ever was, did not only restore the same to them as is aforesaid, but granted a special pardon to those of whom he had conceived so great displeasure." 2 Inst., 535.

"Moreover, we have pardoned *Humfrey Bohun*,<sup>347</sup> earl of Hereford and Essex, constable of England, *Roger*, earl of Norfolk and Suffolk, marshal of England, and other earls, barons, knights, esquires and namely *John de Ferrariis*, with all others of their fellowship, confederacy and bond; and also to all holding twenty pound land in our realm, whether they hold of us in chief, or of other, that were appointed at a day certain to pass over with us into Flanders, where the rancour and ill will borne against us, *et etiam transgressiones si quas nobis fecerint*,<sup>348</sup> unto the making of this present charter."<sup>349</sup>

In 35 Edw. I was "The statute of Carlisle,"<sup>350</sup> or (as called by Lord Coke) '*Statutum de Asportatis Religiosorum*.'<sup>351</sup>

"In the time of this last parliament" (of Edw. I), "notice being taken of the great familiarity there was between the Prince and Piers de Gaveston,<sup>352</sup> and what influence he had upon and power over the Prince,"<sup>353</sup> "on the 26th of February, at Lanercost, by the king's order and command (not on his death bed as commonly storied) he was banished England, and to be ready to quit it at Dover, three weeks after the tournament or justs (which should be 15 days after Easter next coming) and not to return without the king's leave and calling back."<sup>354</sup>

<sup>347</sup> The king's pardon to Humfrey de Bohun and others, is in 1 Stat. of the Realm, p. 124.

<sup>348</sup> "Here these words are added, lest by acceptance of a pardon of transgression they should impliedly confess that they had transgressed: so careful were the lords and commons in former times to preserve the ancient laws, liberties and free customs of their country." 2 Inst., 536.

<sup>349</sup> Then there is provision for reading this charter in the cathedral churches twice in the year, and for denouncing as accursed all that willingly do procure to be done anything contrary to it. And the charter has this conclusion: "In witness of which thing we have set our seal to this present charter, together with the seals of the archbishops, bishops, &c., which voluntarily have sworn that as much as in them is, they shall observe the tenour of this present charter in all causes and articles, and shall extend their faithful aid to the keeping

thereof, &c." 2 Inst., 536.

<sup>350</sup> 1 Stat. of the Realm, 150 to 152.

<sup>351</sup> 2 Inst., 580 to 588. Perhaps in the same parliament was passed the "statute concerning fines and attorneys." 1 Stat. of the Realm, 215.

<sup>352</sup> Son of a Gascon knight who, it is stated, "had earned the gratitude of Edw. I," and had been brought up as the *foster brother* and play fellow of the Prince. 2 Stubbs's Const. Hist., ch. 16, pp. 319, 320.

<sup>353</sup> 1 State Tr. 21, 22. "Whether upon the king's own observation, or their pressing him to it," does not appear; "nor for what particular reasons." *Id.*

<sup>354</sup> "And for the performance of this order, Mons'r Piers, at the day and place aforesaid, made oath upon the body of God (*i. e.*, the consecrated host), the old cross, and the king's other relics; and the Prince of Wales made oath in like manner, that he would not receive, retain, or permit the said Piers to be with him contrary to this order, unless he was

25. *Of the master or keeper of the Rolls, and of the chancellor and the custody of the Great Seal, from December 17, 1292, until the end of the reign. Also of the treasurer and the chancellor of the Exchequer in the latter part of the reign.*

• Though, as mentioned in § 19, p. 417, *John de Langton*, the master or keeper of the Rolls, was appointed chancellor Dec. 17, 1292, yet it does not appear that the office which he held before becoming chancellor was filled thereafter by any other person until October 1, 1295 (23 Edw. I).

Then *Adam de Osgodby* was appointed keeper of the Rolls of chancery. He, no doubt, had been previously one of the clerks of the chancery; from entries as to the deposit of the seal during the chancellor's temporary absence, it seems that he was still considered as the chief of the clerks. He remained in office during the remainder of this reign, and for some years of the next. In both reigns he frequently, in the chancellor's absence, performed his functions, sometimes alone and sometimes in connection with two or three of the other clerks. In Edward's reign he held the Great Seal three times under the seals of three clerks, during the vacancy or absences of the chancellors.<sup>355</sup>

In 1298, during the chancellor's absence in March and December, the Great Seal was deposited with *John de Craucombe*,<sup>356</sup> *John de Caen*<sup>357</sup>

recalled by, and had leave from, his father to return; and for his subsistence beyond sea, so long as he staid there, Mons'r Piers had allowed him an 100 marks sterling by the year out of the revenues of Gascony." *Id.*, 2 Turner's Engl., ch. 3, p. 127, *et seq.*; 1 Mackintosh's Engl., pp. 231, 232, of Phila. edi. 1830; 2 Stubbs's Const. Hist., ch. 14, p. 314, note, and pp. 319, 320.

<sup>356</sup> He was an ecclesiastic, and held the living of Gargrave in Lincolnshire. In the parliament at Carlisle, in Jan., 1307 (35 Edw. I), he acted as proctor for the dean and chapter of York, being then a canon of that cathedral. Foss's Biogr. Jurid.

<sup>355</sup> Evidently a clerk in the chancery, and an ecclesiastic; being made archdeacon of the East Riding of Yorkshire. He continued to be summoned to parliament among the clerks of the chancery till Feb., 1305 (33 Edw. I). *Id.*

<sup>357</sup> Mentioned as holding the Great Seal with other clerks of the chancery on different occasions from 1292 to 1302, during absences of the chancellor. Mr. Foss states that in October, 1298, he was acting in the Exchequer as *locum tenens* for the chancellor. He acted as a receiver of petitions to the parliaments of 1305 and 1307 (33 and 35 Edw. I), and as late as 1310 (3 Edw. II). *Id.*



and *William de Byrlay*.<sup>358</sup> During the chancellor's absence previously, in 1297, from March 4 to 30, and afterwards, in 1299, from Feb. 20 to June 16, *William de Hamilton* held the seal and performed necessary duties.<sup>359</sup>

In 1302, on the 12th of August, *John de Langton* resigned the chancellorship.<sup>360</sup> After he 'restored to the king his Great Seal, the king, in the presence of Amadio, earl of Savoy, John de Bretagne and others of his council, delivered it to the Lord *John de Drakensford*,<sup>361</sup> then keeper of his wardrobe, to be kept there. Afterwards, in the Close Roll, are the following entries:

"On the 23d of August, in the 30th year of the King, in the King's chamber at Kensington, in the presence of Otho de Grandison, Amadio, earl of Savoy, John de Bretagné, and others of the King's council, the King's Great Seal was delivered by the King's order, by the hand of Lord John de Drakensford, keeper of the wardrobe, to Lord Adam de Osgodebey, keeper of the rolls of the chancery, whō was enjoined to keep it under the seal of Master John de Caen and the Lords William de Birlay and Rōbert de Bardelby,<sup>362</sup> until 'the King should provide himself with a Chancellor. The seal being so disposed of, the King set forward on his journey to Dover by the way of Chichester.'" <sup>363</sup>

"On Sunday, the morrow of St. Michael,<sup>364</sup> in the same year, in the King's chapel, at St. Redegund, immediately after mass, in the presence of Lord John de Drakensford and others, chaplains and clerks of the said chapel of the King, Lord Adam de Osgodeby delivered the Great Seal to our Lord the King, who then received it into his own proper hands, and straightway delivered it to Master *William de Grenefield*,<sup>365</sup> dean of Chichester, whom he had chosen

<sup>358</sup> In his case the first occasion occurred in March, 1298 (26 Edw. I), and the last in 1308. *Id.*

<sup>359</sup> *Id.*

<sup>360</sup> Foss's Biogr. Jurid.

<sup>361</sup> 1 Campbell's Lives of Chancellors, ch. 11, p. 181, of edi. 1846, p. 174, edi. 1874.

John de Drakensford had previously filled some office in the Treasury or the Exchequer. He retained the office of keeper of the wardrobe till the end of the reign. Foss's Biogr. Jurid.

<sup>362</sup> "Robert de Bardelby is designated in various records from 30 Edw. I (1302) to 15 Edw. II (1321) as a clerk of the

chancery, and acting under no less than eight chancellors. During that period he was one of those who were entrusted with the keeping of the Great Seal in the chancellor's absence, or in a temporary vacancy of the office. He is often styled one of the '*gardiens du Seal*.' Foss's Biogr. Jurid.

<sup>363</sup> 1 Campbell's Lives of the Chancellors, ch. 11, p. 181 of 2d edi. (1846), p. 174, edi. 1874.

<sup>364</sup> September 29 being the day of 'St. Michael and all Angels,' the morrow of St Michael was September 30.

<sup>365</sup> *William de Greenfield* was born in Cornwall. From King Edward's prac-

for his chancellor, to keep; and the said chancellor delivered the said seal again to the said Adam, to be carried with him, the said chancellor, to Dover; and on the same day, at Dover, the chancellor received it back from the said Adam, and the next day sealed writs with it in the house of God there."<sup>366</sup>

In December, 1304 (33 Edw. I), the chancellor, being elected Archbishop of York, did<sup>367</sup> on the 29th, say to the king before his council:

"That it behoved him to go to Rome on the Thursday following, relative to the business of the said election, and begged the King to ordain what was to be done with the Great Seal; and the King then nominated and elected *William de Hamilton*, dean of York, Chancellor and Keeper of the Seal, and commanded the Archbishop elect to deliver the Seal the next day into the wardrobe to Sir *John de Burstide*,<sup>368</sup> to remain there under the seals of Sir Adam de Osgebey, &c., until the arrival of the new chancellor; and the archbishop elect, the next day, at the sealing time, delivered the seal to the King in bed."

tice of raising the superior officers of the court to the chancellorship, it has been thought not unlikely that Greenfield passed his probation as a clerk of the Chancery or Exchequer. He was of the clerical profession, and had been rewarded with the dignities of the church; the deanery of Chichester having, in 1299, been superadded to his canonry of York. He had also been summoned to the council; on one of the occasions on which he was summoned (which were from 1293) he is called clerk of the council. Foss's Biogr. Jurid. Mr. Horwood mentions "among the *Royal and other Letters*," one (No. 1367) addressed by Edw. I to the King of France (Philip IV), which states that the writer sent the bishop of London, Roger Brabazon, Kt., and William de Grenefeud, *Professor of Civil Law*, to settle the terms of a treaty relative to disputes at sea;" and remarks that "very probably the professor was *William de Greenfield*. P. xix of Preface to Year Books 30 and 31

Edw. I.

<sup>366</sup> 1 Campbell's Lives of the Chancellors, ch. 11, ed. 1846, p. 182, ed. 1874, p. 175.

<sup>367</sup> "In the king's chamber at Lincoln, on Tuesday next after the feast of the Lord's nativity, to-wit, on the feast of St. Thomas the Martyr, in 'the thirty-third year of the king's reign."

<sup>368</sup> *John de Benstede* was clerk or secretary to Edward I, and accompanied him to Flanders August 22, 1297, on which occasion the Great Seal, which the king took with him, was placed in his hands, and another seal left in England with the chancellor. On the king's return in the following March, John de Bensted was employed by him to carry this latter seal to the Exchequer; the Great Seal being then given back to the chancellor (Madox i, 72). He afterwards held a place in the king's wardrobe, when the seal was several times deposited with him." Foss's Biogr. Jurid.

Accordingly, on the 16th of January, 1304-5, the Great Seal was delivered to William de Hamilton.<sup>369</sup> In 33 Edw. I, or in 1305, *John de Benstede* was advanced to the post of chancellor of the Exchequer; and ex-chancellor *John de Langton*, to the bishopric of Chichester.<sup>370</sup>

*William de Hamilton* died in possession of the chancellorship on April 20, 1307, while in attendance on the king near the Scottish border. The Great Seal was found in a purse, sealed up under his private seal.<sup>371</sup>

*Ralph de Baldoch*<sup>372</sup> was immediately fixed on as his successor. Under the Privy Seal, at Cornhill, the 21st day of April, 1307, the king issued a mandate to the treasurer, or his deputy, and to the barons of the Exchequer, commanding and ordaining "that the bishop of London be our chancellor."<sup>373</sup>

Though the king died in July, on the 7th, yet this chancel-

<sup>369</sup> I Campbell's *Lives of the Chancellors*, ch. 11, note p. 185, of edi. 1846, pp. 177, 178, edi. 1874. The archbishop proceeded to the Roman court, where, notwithstanding the king's letters, the pontiff granted him consecration *only* on the payment of 9,500 marks. To relieve *him* from this extortionate imposition, the clergy of his province raised the money among them. The ten years of his rule were principally illustrated by his support of the Knights Templars in their fallen fortunes, and by his assisting at the general council held at Vienne in 1311 when one of the highest places was assigned to him. He died at his palace of Cawood, on December 6, 1315, and was buried in the chapel of St. Nicholas in his own cathedral. He had the character of an eloquent man and an able statesman, and his library was extensive enough to be worthy of a separate bequest to St. Alban's abbey." (Godwin, 685.) Foss's *Biogr. Jurid.*

<sup>370</sup> *Id.*

<sup>371</sup> I Campbell's *Lives of the Chancel-*

*lors*, ch. 11, p. 186, of edi. 1846, p. 179, edi. 1874.

<sup>372</sup> Collated archdeacon of Middlesex in 1276 (4 Edw. I), from which he was raised Octo. 18, 1294, to the deanery of St. Paul's. His election as bishop of London was Feb. 24, 1304; his consecration Jan. 30, 1306. Foss's *Biogr. Jurid.*

<sup>373</sup> And that he come without delay to London to our said Exchequer to receive in your presence our Great Seal, which we now send thither by our dear clerks, Adam de Osgodbey, Master John de Caen and Robert de Bardelley;" and commanding "that you cause the said seal to be delivered to the said bishop, and that you receive from him the oath of office." I Campbell's *Lives of the Chancellors*, ch. 11, p. 186, edi. 1846, p. 179, edi. 1874. Following which is the entry stating before whom the oath was taken, and when it was taken, and the Great Seal delivered to Ralph de Baldoch.

lor sealed writs till the 25th, being till then ignorant of the king's death.<sup>374</sup>

After stating that "the title of the treasurer is sometimes treasurer of the Exchequer, sometimes the king's treasurer," Mr. Stubbs observes that "in 1307, Walter Langton is called Treasurer of England."<sup>375</sup>

Though *Walter de Langton* may not have been removed from the office of treasurer till the end of this reign, yet in 36 Edw. I *John de Sandale* held an office connected with the Treasury or Exchequer; and in the next year he and *John de Drokenesford* are called treasurers.<sup>376</sup>

26. *Appointments of barons of the Exchequer from 1297, until the end of the reign. William de Carleton, senior baron from 1303.*

There was an addition to the barons at the end of 1297, of *Roger de Hegham* (mentioned in § 22, p. 424); and on Octo. 17, 1299 (27 Edw. I), of *Richard de Abyndon*.<sup>377</sup>

*William de Carleton* (mentioned in § 20, p. 418) may not have had the title of chief baron, for that title does not appear to have been adopted during this reign. But after the death, in 31 Edw. I (1303), of *Peter de Leicester* (also mentioned in § 20, p. 418), *William de Carleton* was the senior baron.

In 34 Edw. I, on Octo. 19 (1306), *Humfrey de Waldene*<sup>378</sup> was added to the barons.

<sup>374</sup> Foss's Biogr. Jurid.

<sup>375</sup> "The treasurer became, from the middle of the reign of Henry III, one of the chief officers of the crown." 2 Stubbs's Const. Hist., ch. 15, p. 275 and note 3.

<sup>376</sup> Sandale was likewise one of those appointed to assess the tallage of London and Middlesex, &c. He became chamberlain of Scotland in 33 Edw. I, and held this office till the end of the reign, being at the same time commissioned to treat with the Scots. *Id.*

<sup>377</sup> Mentioned in § 14, p. 400, as Chamberlain of North Wales. He was a baron from 27 Edw. I until the end of

the reign. Foss's Biogr. Jurid.

<sup>378</sup> An officer in the Exchequer. In 19 Edw. I, the manor of Horsington was committed to him, during the heir's minority, at a rent of £50 a year. He was appointed in 28 Edw. I, to perambulate the forests of Somerset, Dorset and Devon. The bishopric of Worcester was, during its vacancy, committed to him in 30 Edw. I; and four years afterwards the archbishopric of Canterbury. After his appointment as baron of the Exchequer, he was in the office till the ensuing July, when the reign terminated. *Id.*

27. *Justices of the King's Bench from 1301 until the end of the reign. Roger le Brabazon Chief Justice; and Henry Spigurnel on the bench with him. Of the Year Books in 30, 31 and 32 Edw. I, and of those appearing therein as justices.*

As mentioned in §§ 20 and 22, p. 421 and p. 424, *John Lovel* was a judge of the King's Bench in certain years. As stated in § 22, p. 424, the appointment of *Gilbert de Roubury* was in 1295, and that of *William de Ormesby* in 1296, and *Roger le Brabazon* was chief justice from 1295. On the bench with *Roubury* and *Ormesby* sat *Henry Spigurnel*.

"*Spigurnel* was the name given to the officer who sealed the writs in chancery, and was by degrees adopted as the surname of the family by which the duty continued, probably during many successions, to be executed." *Henry Spigurnel* acted in a judicial character in 24 Edw. I (1296), and the next year is among the justices and members of the council summoned to parliament. In Hil. 1301, he and *William de Ormesby* are recorded as holding '*locum regis*' at Lincoln, '*in absencia R. de Brabazon*;' and in Easter of the same year, on the roll of pleas '*coram domino rege*,' at Worcester, these two and *Gilbert de Roubury* are mentioned as holding the court in the absence of the chief justice.<sup>379</sup>

In a recent publication, mentioned in § 20, p. 418, may be seen reports of "Michaelmas Term, 30th year Ed. I,"<sup>380</sup> also of "pleas before the Justices in Eyre at Launceston, in the 30th year of the reign of King Edward the first, the Justices being John de Berewyk, William de Burnetoun, Henry Spigurnel, John Randolph and Hervy de Stantoun;"<sup>381</sup> also of "Michaelmas Term at the end of the 31st year" of Ed. I.<sup>382</sup>

<sup>379</sup> Foss's Biogr. Jurid.

<sup>380</sup> Year books 30 and 31 Edw. I, p. 1 to 71, of Lond. edi. 1863.

<sup>381</sup> *Id.*, p. 73 to 291.

<sup>382</sup> *Id.*, p. 293 to 493. After which is p. 497, "Appendix i, containing reports of criminal cases in the Cornish

iter;" p. 528, "Appendix ii, containing reports and notes in Latin of criminal cases, Temp. Edw. I," 528; and p. 546, "Appendix iii, containing writs and enrolments belonging to Michaelmas Term, 31 Edw. I."

Another volume contains reports of "Hilary Term in the thirty-second year of the reign" of Edw. I;<sup>383</sup> "Easter Term in the thirty-second year" of same reign;<sup>384</sup> "Trinity Term in the" same year;<sup>385</sup> "pleadings in Michaelmas Term at the end of" the same year;<sup>386</sup> "Hilary Term in the thirty-third year of the" same reign.<sup>387</sup>

*William de Burnetoun* seems to be the same as "William de Burnton, the last named of five justices itinerant appointed in 30 Edw. I (1302), for the county of Cornwall."<sup>388</sup> *John Randolph* belonged to a family settled in Hampshire, and is first mentioned in 13 Edw. I (1385) as one of the executors of William de Braboeuf, the justice itinerant. He was connected with the Exchequer, and in 26 Edw. I was one of the commissioners to visit the seaports and enquire into the concealment of the customs on wool, &c.<sup>389</sup> *Hervey de* (sometimes called *Henry*) *Staunton* was of a Nottinghamshire family;<sup>390</sup> and was an ecclesiastic as well as a lawyer.<sup>391</sup> As a lawyer he is first mentioned in 30 Edw. (1302), among the justices itinerant into Cornwall, and in the next year as holding the same character in Durham.<sup>392</sup>

<sup>383</sup> Year books 32 and 33 Edw. I, p. 1 to 87, of Lond. edi. 1864.

<sup>384</sup> *Id.*, p. 90 to 203.

<sup>385</sup> *Id.*, p. 205 to 323.

<sup>386</sup> *Id.*, p. 325 to 351.

<sup>387</sup> *Id.*, p. 353 to 419.

*Id.*, p. 421 to 491; after which are enrolments.

<sup>388</sup> Who (Mr. Foss supposes) "may have been the same as William de Brompton, the justice of the Common Pleas in this reign, whose name was sometimes written Burnton." Biogr. Jurid. As to William de Brompton, see § 18, p. 412, note 191.

<sup>389</sup> (Madox i, 231.) Biogr. Jurid. Mr. Foss says: "A document contained in the Rolls of Parliament of 8 Edw. II, proves not only that he acted for four years as a justice of assize, as well as a

justice itinerant in the last circuit into Cornwall, but also that his salary for these services then remained unpaid." (Rot. Parl. i, 332.) *Id.*

<sup>390</sup> Of large possessions and ancient lineage, which is still flourishing at Staunton Hall in that county. He was son of Sir William de Staunton by Athelina, daughter and coheir of John de Musters, lord of Bosingham, in Lincolnshire (Thoroton's Notts i, 305.) *Id.*

<sup>391</sup> On one occasion he is described as prebendary of Hushwait, in the cathedral of York. (Abb. Placit. 259, 335.) *Id.*

<sup>392</sup> In the parliament at Westminster, in Sept., 1305, he was one of those appointed to receive and answer the petitions from Ireland and the isle of Guernsey. *Id.*

28. *Justices of the Common Pleas in 1301, and afterwards until the end of the reign. Ralph de Hengham Chief Justice. Conspicuous is Peter Mallore, before whom Sir William Wallace was tried.*

In 1301 *John de Mettingham* having died, *Ralph de Hengham*<sup>393</sup> was restored to the bench and constituted chief justice of the Common Pleas.<sup>394</sup> His associates were *Elias de Beckingham*,<sup>395</sup> *William de Bereford*<sup>396</sup> *Peter Mallore* and *Lambert de Trikingham*.<sup>397</sup>

*Elias de Beckingham* retired from the bench, or died in 34 Edw. I (1305).<sup>398</sup> After which there was raised to the bench of the Common Pleas, in Nov., 1305, *Henry de Guldeford*,<sup>399</sup> and April 20, 1306, *Hervey de* (or *Henry*) *Staunton*.<sup>400</sup>

Conspicuous among the justices is one who holding the town of Melcombe and certain lands at Dodemerton in Dorsetshire, in ferm under the king (Madox i, 335) was summoned to perform military service against the Scots in 28 Edw. I. His name was *Peter Mallore*; he was the justice before whom Sir *William Wallace* was tried

<sup>393</sup> Mentioned in § 18, p. 411. His name is introduced at the bottom of the list of judges and other officers who were summoned to the parliament of March 1300; he appears as if among the justices itinerant. In the following April he was the first named of those appointed to perambulate the forests of Essex, Buckingham and Oxford. Foss's Biogr. Jurid.

<sup>394</sup> Sept. 14, 1301. In this office he continued till the end of the reign. *Id.*

<sup>395</sup> Until he retired from the bench, or died in 34 Edw. I (1305). *Id.*

<sup>396</sup> Mentioned in § 20, p. 318.

<sup>397</sup> Of a family, so called, from a place of that name in Lincolnshire. He was a justice itinerant in Kent in 27 Edw. I (1290); and the next year was raised to the bench of the Common Pleas. *Id.*

<sup>398</sup> He was buried at Bottisham church, in Cambridgeshire. On his sepulchral

memorial he is designated 'Justiciarius Domini Regis Angliæ.' Foss's Biogr. Jurid.

<sup>399</sup> He was appointed to perambulate the forests of the northern counties in 26 Edw. I, and of Salop, Stafford and Derby two years afterwards; and was a justice itinerant for the Isle of Wight in 32 Edw. I. During all this time he was among the judges summoned to parliament. Foss's Biogr. Jurid.

<sup>400</sup> Being an ecclesiastic as well as a lawyer, he appears in the one character as probendary of Hustwhait, in the cathedral of York, and, in the latter, among the justices itinerant; for Cornwall, in 30 Edw. I, and for Durham next year. In the parliament at Westminster, in Sept., 1305, he was one of those appointed to receive and answer petitions from Ireland and the isle of Guernsey. *Id.*

in 1304.<sup>401</sup> From *Stow's Chronicle*, p. 209, Mr. *Turner* (imitating *Ld. Hailes*) quotes the following:

"William Wales, was brought to London with great numbers of men and women wondring upon him. He was lodged in the house of William Delect, a citizen of London, in Fanchurch street. On the morrow, being the even of St. Bartholomew, he was brought on horseback to Westminster; John Seagrave and Geoffrey Knight, the major, sheriffes and aldermen of London, and many other, both on horseback and on foot, accompanying him; and in the great hall at Westminster, he being placed on the south bench, crowned with laurel, for that he had said, in times past, that he ought to beare a crowne in that hall, as it was commonly reported, and being appeached for a traytor by Sir *Peter Mallorie*, the king's justice, hee answered that hee never was a traytor to the king of England."<sup>402</sup>

Speaking of the arraignment of Wallace at Westminster as a traitor, Mr. *Turner* says:

"His defence was complete:—he had never sworn allegiance to Edward; he was born with none; he had never acquiesced in his authority, he could not be a traitor to him. But the English judges adopted the feelings of their sovereign. He was found guilty of treason—hanged, drawn and quartered. His head was exposed on London Bridge, and his divided limbs sent to intimidate Scotland. Edward obtained the wretched gratification of destroying his noble enemy; but his cruelty has only increased the celebrity of Wallace, and indelibly blotted his own."<sup>403</sup>

29. *Of itinerant justices in and after 30 Edw. I; and of justices of trailbaston in 33 Edw. I and 35 Edw. I.*

*William de Mortimer*, who (as stated in § 20, p. 421) was in 20

<sup>401</sup> Foss's Biogr. Jurid.

<sup>402</sup> *Turner's Engl.*, ch. 2, p. 90.

<sup>403</sup> 2 *Turner's Engl.*, ch. 2, p. 90, of ed. 1825. "The popular affection for Wallace is strikingly shown by the many local traditionary remembrances of him, which are still preserved in Scotland. The hills, the houses, the castles and the glens, which he frequented; the stones on which he sat; the tree in which he was secreted; the rock from which he plunged into the sea; the bridge which he crossed; the forest to which he withdrew; the foaming cas-

cade behind which he was once screened; the barn in which he was taken; and the lake into which, after he was overpowered, he hurled his sword, are still fondly pointed out." *Id.*, p. 90, note 125. Sir James Mackintosh considers that "His name stands brightly forward among the foremost of men, with Vasa, with the two Williams of Orange, with Washington, with Kosciusko, with his own more fortunate, but less pure successor, Robert Bruce." 1 *Mackintosh's Engl.*, p. 221, of Phila. edi. 1830.



Edw. I, one of the justices itinerant for the northern counties, acted in 32 Edw. I as a justice of assize in ten of the inland counties.<sup>404</sup> *Nicholas Fermbaud* (or *Fernybaud*)<sup>405</sup> is mentioned (with *William Inge*) as a justice taking assizes in 1305.<sup>406</sup>

Referring to what has been said in § 23, p. 429, as to justices of *trebaston* or *trailbaston*, it may be observed that *William de Cressi*, *John de Barton*, *Ralph Fitz-William*, *Gerard Salveyn* and *Thomas de Burnham* are named as justices of trailbaston in commissions dated Nov. 23, 1304;<sup>407</sup> that in April, 1305, there were commissions to others<sup>408</sup> for all the counties of England, except those in the home district; that some are in commissions of trailbaston, not only in 33, but also in 35 Edw. I;<sup>409</sup> and others are only in the latter year<sup>410</sup> and some of these last are for the home counties.<sup>411</sup>

30. *Of Edward's death, July 6, 1307; his person and character. Condition of his body in 1774. Character and action of Hen. I, Hen. II and Edw. I compared. Elements, characteristics and results of Edward's greatness.*

Edward had reigned 34 years and seven months, and had just completed his sixty-eighth year when, upon an expedition against

<sup>404</sup> In the following year he was named a receiver of the petitions of Ireland and Guernsey in the parliament at Westminster in September. *Id.*

<sup>405</sup> Constable of Bristol from 22 to 33 Edw. I. In 28 Edw. I, he was appointed to perambulate the forests of Gloucestershire and neighbouring counties, and two years afterwards had custody of the bishopric of Bath and Wells during its vacancy. *Id.*

<sup>406</sup> *Id.* As to *William Inge*, see § 21, p. 422.

<sup>407</sup> When the first commission of trailbaston into Lancashire was issued, March 12, 1305, *Milo de Stapleton* and *John de Byrun* were the two justices appointed under it; but, in the next month, they were superseded by more comprehensive commissions. Foss's

Biogr. Jurid.

<sup>408</sup> To-wit: *John de Botetourt*, *Edmund D' Eyencourt*, *Nicholas Fermbaud* (or *Fernybaud*), *Thomas de la Hyde*, *Robert de Harweden*, *John de Insula*, *William de Kerdeston*, *William de Ormesby*, *Henry Spigurnel* and *William le Vavasour*.

<sup>409</sup> *William Howard*, *William Inge*, *Gilbert de Knovill*, *Peter de Malo Lacu* (or *Mauley*), *William Martin*, *Adam de Middleton* and *Robert de Walsingham*.

<sup>410</sup> *William de Beresford*, *Hugh de Louther*, *Peter Mallore*, *John de Mutford*, *Robert de Retford*, *Thomas de Snyterton* and *John de Thorpe*. *Peter Mallore* died about July, 1310.

<sup>411</sup> *Roger de Hegham*, *Robert de Retford*.

Scotland, he reached Burgh on the Sands, July 6, 1307, and (next day) expired.<sup>412</sup> A contemporary and survivor of Edward I describes him thus:

"His head spherical; his eyes round and gentle and dove-like, when he was pleased, but fierce as a lion's and sparkling with fire when he was disturbed; his hair black and crisp; his nose prominent and rather raised in the middle; his chest was broad; his arms were agile; his thighs long; his feet arched; his body was firm and fleshy, but not fat. He was so strong and active, that with his hand he could leap into his saddle. Passionately fond of hunting, whenever he was not engaged in war, he amused his leisure with his dogs and falcons. He was rarely indisposed and did not lose either his teeth or his sight by age. Temperate by habit, he never devoted himself to the luxuries of his palace. He never wore his crown after the day of his coronation, thinking it rather a burden than an honour. He declined the royal garments of purple, and went about in the plain and common dress of a plebian. Being once asked why he did not wear richer apparel? he answered with the consciousness of true greatness, that it was absurd to suppose that he could be more estimable in fine, than in simple clothing. No man was more acute in counsel, more fervid in eloquence, more self-possessed in danger, more cautious in prosperity, more firm in adversity. Those whom he once loved he scarcely ever forsook; but he rarely admitted into his favour any one that had excited his dislike. His liberalities were magnificent."<sup>413</sup>

In 1774 the Chapter of Westminster opened the grave of Edward I,<sup>414</sup> and found his body, crown, velvet and tissue, perfect.

"The flesh of his lips and cheeks was sound and his hands perfect, except that one had lost its nails. There was a gauze on the face which had grown into the grain, and they could not lift it up. His measure was six feet two."<sup>415</sup>

<sup>412</sup> 2 Turner's Engl., ch. 2, pp. 109, 110. His death there is commemorated by an obelisk in 1685, erected by Henry, duke of Norfolk. It fell down on March 4, 1795, and was rebuilt by the Earl of Lonsdale in 1805. It stands about a mile north of the village. 1 Dugdale's Engl., pp. 310, 311.

<sup>413</sup> 2 Turner's Engl., ch. 2, pp. 113, 114. There, in note 183, Mr. Turner states that "this is taken from a 'Commemoratio' addressed to his widow, queen Margaret, and preserved in the

Cotton library, MS., Nero, D. 2. The author was John, of London." The same account is mentioned in Miss Strickland's Queens of England, vol. 2, p. 118, of Phila. edi. 1857.

<sup>414</sup> Westminster Abbey "suffered much by fire in 1274, but was repaired by Edw. I, Edw. II, and the abbots." "Here are the tombs of King Edward I, and several other kings and queens of England." 6 Dugdale's Engl. and Wales, p. 1122.

<sup>415</sup> In 1774, on May 15, Horace Wal-

The effects of Edward's mind will remain much longer than the four or five centuries that his body has been preserved.

"Edward had, besides force and honesty, a clear perception of true policy, and such an intuitive knowledge of the needs of his people as could proceed only from a deep sympathy with them. The improvement of the laws, the definite organization of government, the definite arrangement of rights and jurisdictions, the definite elaboration of all departments which mark the reign, and make it a fit conclusion of a period of growth in all these matters, were unquestionably promoted, if not originated, by the personal action of the king. What under Henry I was the effect of despotic routine, and under Henry II the result of law imposed from without, becomes under Edw. I a definite organization, worked by an indwelling energy. The incorporation of the spirit with the mechanism is the result of the discipline of the century, but the careful determination of the proper sphere and limit of action, in each department, the self-regulating action of the body politic, was very much the work of Edward."<sup>416</sup>

In the reigns of Hen. IV and Hen. V, the parliaments refer to Edw. I as "a prince of great fortitude, wisdom and justice."<sup>417</sup> He is regarded as "the greatest of the Plantagenets."

"He was great in organizing; every department of administration felt his guiding and defining hand. The constitution of parliament which was developed under his hands remains, with necessary modifications and extensions, the model of representative institutions at this day. His legislation is the basis of all subsequent legislation, anticipating and almost superseding constructive legislation for two centuries."<sup>418</sup>

"A comparison of the legislation of Edward I with that of Henry II, brings out conclusively the fact that the permanent principles of the two were the same; that the benefits of a sound administration of the law conferred by the first, were adapted by his great-grandson to the changed circumstances, and amplified to suit the increasing demands

pole wrote: "They had found in 'Rymer' that they were obliged to bestow a new cerecloth on the corpse every year. That poor service was forgotten after two reigns, and curiosity alone recalled it now after five hundred years." Letters to Sir Horace Mann, vol. 2, p. 276, of Lond. edi. 1843. The time which had then elapsed was, however, not quite so much as 500, being no more than 467 years.

<sup>416</sup> 2 Stubbs's Const. Hist., ch. 14, p. 102.

<sup>417</sup> 2 Inst., 29.

<sup>418</sup> 2 Stubbs's Const. Hist., ch. 14, p. 157. "The struggles of the succeeding century are not about the framework of the constitution, but about the management of it. The vessel is complete, but the helm is contested by Royalists and Lancastrians." Select Charters, p. 420; Green's Hist. of Engl. Peop., book 3, ch. 4, p. 320, of vol. I.

of a better educated people. The principle of restricting the assumptions of the clergy, which, although enunciated by the Conqueror, had in the Norman polity been neutralized by the practical independence of the church courts, and by the arbitrary action of the king's, had been made intelligible in the constitutions of Clarendon."<sup>419</sup>—"Edward's statute '*de religiosis*' and the statutes of Carlisle"<sup>420</sup> prove his confidence in Henry's theory, that the church of England, as a national church, should join in bearing the national burdens, and should not risk national liberty or law by too great dependence on Rome. What the statute '*de religiosis*' was to the church, the statute '*quia emptores*' was to feudalism; but it was only one of a series of measures by which Edward attempted to eliminate the doctrine of tenure from political life. Henry had humbled the feudatories; Edward did his best to bring up the whole body of land owners to the same level, and to place them in the same direct relation to the crown."<sup>421</sup>

Of the warrior's temper—of the temper that finds delight in war,—he had little or none. His freedom from it was the more remarkable that Edward was a great soldier."<sup>422</sup>

"The rule of Edward, vigorous and effective as it was, was a rule of law, and of law enacted not by the royal will, but by the common council of the realm."<sup>423</sup>

There is more than "one great blot upon Edward's reign;" "he bought a grant from his parliament by" yielding "to their wishes in the matter of the Jews;"<sup>424</sup> he caused the execution of Wallace.<sup>425</sup> But—

"With a masterly boldness he entrusted the government of the country to a council of *Scotch* nobles, many of whom were freshly pardoned for their share in the war."<sup>426</sup>—"If the excellence of a statesman's work is to be measured by its duration and the faculty it has shewn of adapting itself to the growth and development of a nation, then the work of Edward rises to the highest standard of excellence."<sup>427</sup>

<sup>419</sup> See ch. II, § 8, p. 195.

<sup>420</sup> § 24, *ante*, p. 435.

<sup>421</sup> 2 Stubbs's Const. Hist., ch. 14, p. 105 to 107.

<sup>422</sup> Green's Hist. of Engl. Peop., book 3, ch. 4, p. 317, of vol. I, edi. 1879.

<sup>423</sup> *Id.*, p. 346.

<sup>424</sup> *Id.*, p. 336. See § 19, *ante*, p. 415.

<sup>425</sup> *Id.*, p. 368. See § 28, *ante*, p. 444.

<sup>426</sup> *Id.*, pp. 368, 669.

<sup>427</sup> *Id.*, p. 319.

## CHAPTER XVII.

### REVIEW OF PERIOD FROM 1216 TO 1307.

#### 1. *Hubert de Burgh England's last great justiciar. How maritime jurisdiction was arranged afterwards.*

*Hubert de Burgh* was England's last great justiciar.<sup>1</sup>

"In 1217 the victory which saved England from the last attempt of Lewis was won by the fleet nominally under the command of the justiciar *Hubert de Burgh*; but Philip of Albin and John Marshall, to whom Henry's council had entrusted the guardianship of the coast, were the responsible commanders. In 1264 *Thomas de Multon* and *John de la Haye* were appointed, by *Simon de Montfort*, '*Custodes partium maritimarum*,' with the charge of victualling and commanding the fleet. In the earlier years of Edward I the officers of the Cinque Ports seem to have exercised the chief administrative power; and no attempt had yet been made to unite the defence of the coasts, the maintenance of a fleet of war or transport, and the general regulation of the shipping, under one department. In 1294, however, when the constitutional storm was rising, when the Welsh, the Scots and the French were all threatening him, Edward instituted a permanent staff of officials."<sup>2</sup> "In 1298 the orders for the superintendence of the fleet are given to *Robert de Burghersh* as lieutenant-warden of the Cinque Ports, and *John le Sauvage* as lieutenant-captain of the mariners. The negotiation of peace with France probably made further proceedings unnecessary for a time. In 1302 *Robert de Burghersh* is still warden of the Cinque Ports and answerable for the service of fifty-seven ships due from them; in 1304 he with *Robert le Sauvage*

<sup>1</sup> 2 Stubbs's Const. Hist., ch. 15, p. 269.

<sup>2</sup> "He appointed *William Leyburne* captain of all the postmen and mariners of the king's dominions, and under him *John de Bottetourt*, warden of all, from the Thames to Scotland. For the manning of the fleet, he issued orders to the

sheriffs to collect the outlaws of their shires, with the promise of wages and pardon: besides these, the chief captain was empowered to impress men, vessels, victuals and arms, paying, however, reasonable prices." 2 Stubbs's Const. Hist., ch. 15, p. 288.

and *Peter of Dunwick* has the charge of victualling the twenty-five ships furnished by the city of London. In 1306 we find a further step taken; *Gervas Alard* appears as captain and admiral of the fleet of the ships of the Cinque Ports, and all other ports from Dover to Cornwall; and *Edward Charles* captain and admiral from the Thames to Berwick; a third officer of the same rank probably commanded on the coast of the Irish sea."

Thus maritime jurisdiction was arranged until the appointment of a single high admiral in 1360."<sup>3</sup>

2. *Of the court of Exchequer, King's Bench and Common Pleas; and the jurisdiction of itinerant justices.*

"To the arrangements made by Henry II in 1178 for the constant session of a limited number of judges in the Curia" has been traced "the probable origin of the King's Bench as a distinct tribunal; and we have seen in the 17th article of Magna Charta, the Common Pleas separated from the other suits that came before this court. At the beginning of the reign of Henry III the three courts are distinguished; first, as to the class of causes entertained: the Exchequer hearing cases touching the king's revenue; the court of Common Pleas the private suits of subjects; and the King's Bench, under the head of *placita coram rege*, all other suits, whether heard before the king, or before the justiciar, or the limited staff of judges. They are distinguished further, as to the place of session; the Common Pleas being fixed at Westminster; the other two following the king, although the Exchequer, in its proper character was, as a rule held at Westminster."<sup>4</sup>

From the beginning of the reign of Edward I, we find a series of Chief Justices of Common Pleas, as well as of the King's Bench, and from the middle of the next reign a regular succession of Chief Barons of the Exchequer."<sup>5</sup>

Under the charters of 1216 and 1217, the itinerant justices were properly justices for particular assizes merely; "and their sessions do not appear to have taken the place, or have superseded the necessity of the more important visitations for the purpose of jail delivery and amercements which had been continued since 1166. These visitations seem to have been held at irregular intervals and under special articles of instruction; some of the justices being, as Bracton tells us (lib. iii, tr. i, c. 11), commissioned to hear all sorts of pleas, and some restricted to particular classes of causes. Throughout the reign of Henry III, these courts are found everywhere in great activity, their judicial work being still combined with financial work."—"The petition that led to the Provisions of Oxford, con-

<sup>3</sup> *Id.*, p. 289.

<sup>5</sup> *Id.*, p. 267.

<sup>4</sup> 2 Stubbs's Const. Hist., ch. 15, p. 266.

tains complaints of mal-administration and extortion." Supposing 'the irregular system' was continued, "Edward I has the credit of reducing to definite rules the characteristic procedure of his great-grandfather, when he substituted regular visitations of judges of assizes, for the irregular circuits of the justices itinerant."<sup>6</sup> After the statute of 21 Edw. I (mentioned in ch. 16, § 21, pp. 421, 422), there was a further act of the 27th year, whereby, "the justices of assize were ordered to act as justices of jail delivery;" and thus obtained all the judicial authority which had belonged to their predecessors, although special commissions for criminal cases, such as that of the justices of Trailbaston"<sup>8</sup> "were now and then appointed. The system of division of business now established in the courts of Westminster, so far affected the provincial jurisdiction that it was necessary to provide that assizes and inquests might be taken before any one judge of the court in which the plea was brought and one knight of the shire."<sup>9</sup>

3. *Conservators of the peace; courts of the shire and hundred; manorial courts: and regulations for juries.*

"Intermediate between the provincial administration of the supreme courts and the ancient local administration of shire and hundred, come the offices connected with the maintenance of peace and police, derived from the higher source."—"Knights assigned to enforce the oath of peace, and the hue and cry, appear as early as the year 1195.<sup>10</sup> Their designation as *assigned* seems to prove that they were royal nominees and not elected officers, but their early history is obscure. To this class may be referred also the appointment by Henry III in 1230 of three,<sup>11</sup> and in 1252 of two, knights assigned in each county to enforce the assize of arms,<sup>12</sup> and the nomination of constables of hundreds and townships; to secure the conservation of the peace. In 1264, a single '*custos pacis*' was assigned in each shire to conserve the peace and possibly to watch, possibly to supersede, the sheriff but with instructions not to interfere with his functions so as to diminish the revenue.<sup>13</sup> In 5 Edw. I it appears that this *custos pacis* had become an elective officer, chosen by the sheriff and the community of the county, in the county court and under the instructions of the king conveyed by the sheriff."<sup>14</sup> "In 1282 the earl of Cornwall was assigned by the king to conserve the peace in Middle-

<sup>6</sup> *Id.*, p. 269 to p. 271.

<sup>7</sup> 1 Statutes, 129.

<sup>8</sup> Parl. Writs i, 408.

<sup>9</sup> 2 Stubbs's Const. Hist., ch. 15, p. 271; citing 1 Statutes 130. "It was not until the 14th of Edw. III, that inquests of *nisi prius* were allowed to be heard by the justices of *nisi Prius*, altogether irrespective of the court to

which the justices belonged." *Id.*, pp. 271, 272; citing 1 Statutes 286.

<sup>10</sup> Select Charters, pp. 255, 256;  
1 Stubbs's Const. Hist., ch. 12, p. 507;  
2 *Id.*, p. 272.

<sup>11</sup> *Id.*; citing Royal Letters i, 371.

<sup>12</sup> Select Charters, pp. 362, 366.

<sup>13</sup> Select Charters, p. 403.

<sup>14</sup> See § 1, *ante*, p. 449.

sex and several other counties, with power to appoint deputies. After the passing of the statute of Winchester, the office of conservator of the peace, whose work was to carry out the provisions of that enactment, was filled by elections in the shiremoot."<sup>15</sup>

"It is to the thirteenth century that the ancient machinery of the county court and hundred court owes its final form. The second charter of Henry III determines the times of meeting: the shire moot is henceforth to be held from month to month; the sheriff's tourn twice a year, after Easter and after Michaelmas; and view of frankpledge is to be taken at the Michaelmas tourn.<sup>16</sup> By a supplementary edict in 1234 Henry allowed the courts of the hundred, the wapentake, and the franchises of the magnates to be held every three weeks, and excused the attendance of all but those who were bound to special service, or who were concerned in suits. These courts, the continuance of which is based, according to this edict, on the fact that under Henry II they were held every fortnight, are thus shown to be still substantially the same as in Anglo-Saxon times, when the shire-moot was held twice a year, and the hundred-moot once a month.<sup>17</sup>

"The smaller manorial courts gradually adopted the improvements of the larger and popular courts, but great diversities of custom still prevailed, and the distinction between court leet and court baron, the jurisdiction derived from royal grant and that inherent in the lordship whether derived from the original grant or from the absorption of the township jurisdiction, becomes more prominent."<sup>18</sup>

"The regulations for juries occupy a prominent place among the minuter acts of Edward's legislation"<sup>19</sup>

<sup>15</sup> 2 Stubbs's Const. Hist., ch. 15, p. 210, and pp. 272, 273. In a note on p. 273, Mr. Stubbs observes, that "probably the conservators were, in the first instance, appointed by the crown; the vacancies being filled by election."

<sup>16</sup> Select Charters, p. 337; 2 Stubbs's Const. Hist., ch. 15, p. 273.

<sup>17</sup> *Id.*, pp. 273, 274. "The statute of Merton allowed all freemen to appear by attorney in the local courts." (Ch. 15, § 20, p. 321.) "The attendance of the magnates of the county at the sheriff's tourn was dispensed with by the Provisions of Westminster in 1259, and by the Statute of Marlborough in 1267." *Id.* (2 Stubbs), p. 274.

<sup>18</sup> 2 Stubbs's Const. Hist., ch. 15, p. 274. "The structure of these courts bears" (as is seen in 1 Stubbs 88, 89, 399, 606,) "so many marks of antiquity, that we may fairly suppose the later

lawyers to have merely systematized rules which they found prevailing." 2 *Id.*, p. 274.

<sup>19</sup> "The determination of the qualification of a juror, which had no doubt some bearing in the later question of the electoral suffrage, belongs to this reign. In 1285, for the relief of the poorer suitors who felt the burden of attendance at the courts very heavily, it was ordained that a reasonable number of jurors only should be summoned, and that none should be put on assizes within their own shire who could not spend twenty shillings a year, or out of their own shire who could not spend forty. In 1293, the qualification for the former was raised to 40 shillings, and for the latter to a hundred; saving, however, the customs observed in boroughs and before the itinerant justices." *Id.*, pp. 274, 275.



4. *Of the shire (or county) communities.*

"The county court, in its full session, that is, as it attended the itinerant justices on their visitation, contained the archbishops, bishops, abbots, priors, earls, barons, knights and freeholders; and from each township four men and the reeve, and from each borough twelve burghers. It was still the folk-moot, the general assembly of the people, and in case of any class or person being regarded as outside the above enumeration, the sheriff was directed to summon to the meeting all others who by right or custom appeared before the justices. It contained thus all the elements of a local parliament—all the members of the body politic in as full representation as the three estates afterwards enjoyed in the general parliament."<sup>20</sup>

"According to the 42d article of the charter of 1217,"<sup>21</sup> it "sat once a month; but it is not to be supposed that on each occasion it was attended by all the qualified members; the prelates and barons were generally freed from the obligation of attendance by the charters under which they held their estates; every freeman might by the statute of Merton appear by attorney;<sup>22</sup> and by the statute of Marlborough all above the rank of knight were exempted from the the sheriff's tourn,<sup>23</sup> unless specially summoned: the charters of the boroughs implied, and sometimes expressed, a condition that it was only when the court was called to meet the justices that their representatives need attend;<sup>24</sup> in some cases the barons and knights compounded for attendance by a payment to the sheriff;<sup>25</sup> and the custom of relieving the simple knights, by special license issued by the king, prevailed to such an extent that the deficiency of lawful knights to hold the assizes in the county court was a constant subject of complaint.<sup>26</sup> The monthly sessions then were only attended by persons who had special business and by the officers of the townships, with their lawful men qualified to serve on the juries. For the holding of a full county court for extraordinary business, a special summons was in all cases issued."<sup>27</sup>

"The sheriff is still the president and constituting officer of the county court; to him is directed the writ ordering the general summons, and through him is made the answer of the county to the question or demand contained in the writ."<sup>28</sup>—"Although the general contributions of the country, the fifteenths, the thirtieths and the like, no longer pass, necessarily, through his hands, he retains the collection of scutages and other presumptive imposts, and considerable power of amercement for non-attendance on his summons. The

<sup>20</sup> 2 Stubbs's Const. Hist., ch. 15, p. 205.

<sup>21</sup> That which is 42d in Select Charters, p. 337, is mentioned as ch. 35 in 2 Inst., p. 68; and in ch. 15, § 11, *ante*, p. 299.

<sup>22</sup> 1 Statutes of the Realm, p. 4.

<sup>23</sup> *Id.*, p. 22.

<sup>24</sup> Select Charters, p. 303.

<sup>25</sup> 1 Stubbs's Const. Hist., ch. 5, p. 102; 2 *Id.*, ch. 15, p. 206.

<sup>26</sup> Select Charters, p. 378.

<sup>27</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 205, 206. "Our knowledge of its composition is derived from such special writs." *Id.*, p. 206.

<sup>28</sup> *Id.*, p. 206.

king retains the power of nominating the sheriffs, but not without a struggle."<sup>29</sup>

"In the county court, and under the guidance of the sheriffs, was transacted all the business of the shire:" "The act of the county court was the act of the shire in matters judicial, military and fiscal, in the details of police management, and in questions (where such questions occurred) connected with the general administration of the country."<sup>30</sup>

"The judicial work of the county was done in the county court: except in the county court, even the itinerant justices could not discharge their functions."<sup>31</sup>

"The conservation of the peace, or police, a department that links the judicial with the military administration of the shire, was fully organized on the same principles. For each necessary measure the county was an organic whole; the action was taken in the county court; and in the execution of the law the sheriff was assisted or superseded by elected representatives."<sup>32</sup>—"In the fifth year of Edward I, an officer called '*custos pacis*' whose functions form a stage in the growth of the office of justice of the peace, was elected by the sheriff and community of each county in the full county court."<sup>33</sup>

"The military administration of the county, furnishes illustrations of the completeness of the local agencies, and of the concentration of those agencies for national purposes."<sup>34</sup>

"In the execution of the remedial measures which form so large a part of the political history of the country, the agency of the counties is employed, generally, by means of elected representatives."<sup>35</sup>

But the fiscal business is that in which the shire system most closely approached, before it actually touched, the national council; and in

<sup>29</sup> "The right of nominations being at one time claimed for the baronage in parliament, and at another for the county court itself." *Id.*, pp. 206, 207. An account of the changes from time to time, as to the mode of appointment and the limitation of the period of office, is in *Id.*, pp. 207, 208.

<sup>30</sup> *Id.*, p. 208. There was the use in each department of representation, and the practice of electing representatives, who act on behalf of the whole community of the shire. "The custom of electing representatives in the county court was in full operation before such representatives were summoned to parliament." *Id.*, pp. 208, 209.

<sup>31</sup> And the county was the sphere of jurisdiction of the justices of assize and

justices of the peace. The county was the *patria*, whose report was presented by the juries; and a process by assize was '*per judicium et consilium totius comitatus*.' *Id.*, p. 209.

<sup>32</sup> *Id.*, p. 209.

<sup>33</sup> 1 Bl. Com., 349; Foss's Biogr. Jurid., p. 64, title *Fulco Baynard*. The conservators, who carried out the provisions of the statute of Winchester, although no mention of the mode of appointment occurs in the act itself, were, after the first vacancy, elected in the same way. In this instance the principle was extended to the election of constables for the hundreds. 2 Stubbs's Const. Hist., pp. 209, 210.

<sup>34</sup> *Id.*, p. 210.

<sup>35</sup> *Id.*, p. 212.

it therefore the special action of the shire has the greatest constitutional interest."<sup>36</sup> Referring to the case in Yorkshire, in 1220,<sup>37</sup> Mr. Stubbs says, "the case is perhaps exceptional: the Yorkshire barons would ordinarily have been consulted before the question of collection could arise; but the event clearly proves that the county court claimed a right to examine the authority under which the tax was demanded, and to withhold payment until the question was answered."<sup>38</sup>

### 5. Of the town communities.

"The communities of cities and boroughs present points of analogy and contrast with the county communities."<sup>39</sup>

"As there were many types of town constitution existing at the same time, so too, there were many degrees of completeness of functions."<sup>40</sup>—"There were, however, some points in which—(London with sheriffs and a shire constitution of its own, being perhaps the only exception)—the sheriff and the county court still reviewed or incorporated the town constitution."<sup>41</sup>

<sup>36</sup> 2 Stubbs's Const. Hist., ch. 14, pp. 212, 213.

<sup>37</sup> In 1220, the writ declaring the grant of carucage to have been made by the '*magnates et fideles*' in the '*commune consilium*,' was dated on the 9th of August. Select Charters, pp. 342, 343. In the month of September *Geoffrey Neville*, the king's chamberlain, who was sheriff of Yorkshire, and had to collect the carucage writes to the justiciar: (Royal Letters i, 151.) he had received the writ on the 2d, and had summoned the earls, barons and freeholders to hear it on the 14th. On that day the earls and barons did not attend in person, but, as was usual, sent their stewards. The writ was read: to the disgust of the sheriff the stewards replied, with one accord, that their lords had never been asked for the aid, and knew nothing of it; without consulting them they dared not assent to the tax. They insisted that the lords of Yorkshire, like those of the southern shires, ought to have been asked for the grant by the king, either by word of mouth or by letter. The sheriff attempted to

answer them, but was obliged to grant a postponement until the next county court, that, in the mean time, they might lay the king's command before their lords. He learned, however, that if the king, on a visit which he was shortly to make to York, should call together the magnates, and make the proposal in form, it would be accepted. 2 Stubbs's Const. Hist., ch. 14, pp. 214, 215.

<sup>38</sup> Mr. Stubbs adds, that "the county court of Worcester thus declined to pay the illegal exaction of the eighth in 1297." *Id.*, p. 215.

<sup>39</sup> 2 Stubbs's Const. Hist., ch. 14, p. 216. <sup>40</sup> *Id.*, p. 218.

<sup>41</sup> *Id.*, p. 219. In matters of jurisdiction; the towns, however completely organized, could not exclude the itinerant justices, whose court being the shire-moot involved the recognition of the sheriff. Hence in the general summons of the county court before these officers, the boroughs were ordered to send twelve burghers to represent the general body. *Id.*; and Select Charters, p. 349.

In the measures for the conservation

"Simon de Montfort and Edward I, when they determined to call the town communities to their parliaments, may have hesitated whether to treat them as part of the shire communities or as independent bodies. Earl Simon adopted the latter course, which was perhaps necessary under the local divisions of the moment: as he summoned out of the body of the baronage only those on whom he could rely, so he selected the towns which were to be represented, and addressed his summons directly to the magistrates of those towns."<sup>42</sup> "And this plan was adopted by Edward I on one of the first occasions on which he called the borough representatives together."<sup>43</sup> "But when the constitution took its final form,—a form which was in thorough accordance with the growth of the national spirit and system,—it was found more convenient to treat them as portions of the counties; the writ for the election was directed to the sheriff, and the formal election of the borough members, as well as that of knights of the shire, took place in the county court."<sup>44</sup>

6. *The date at which, and the mode in which, was fixed the right of the communities of shires and of towns to representation in parliament.*

"The great mark which the century and the reign of Edward I leave on our constitutional history is the representation of the commons: the collecting in parliament of the representatives of the communities of both shires and buroughs, the concentration of the powers which had been previously exercised in local assemblies, or altogether superseded by the action of the barons, and the admission of such representatives to a share in the supreme work of government."<sup>45</sup>

The "date, 1295, may be accepted as fixing finally the right of shire and town representation, although for a few years the system admits of some modifications."<sup>46</sup>—"The parliament of 1295 differed, so far as we know, from all that had preceded it, and was a precedent for all time to come, worthy of the principle which the king had enunciated in the writ of summons. The writs for assembling the representatives are addressed to the sheriffs; they direct the election not only of the knights but of citizens and burghers; the return to

of the peace, the sheriff had orders to enforce the observance of watch and ward, to forbid tournaments and other occasions of riot, and to examine into the observance of the Assize of arms, not only in the geldable or open townships of the shire, but in the cities and boroughs as well." *Id.* (2 Stubbs), p. 219.

"The military contingents of the towns, composed of the men sworn

under the Assize of arms, were also led by the sheriffs." *Id.*

<sup>42</sup> 2 Stubbs's Const. Hist., ch. 15, p. 220; Select Charters, p. 406.

<sup>43</sup> In 1283. *Id.*, 458; 2 Stubbs's Const. Hist., ch. 14, p. 116, and ch. 15, p. 220.

<sup>44</sup> *Id.*, p. 220.

<sup>45</sup> 2 Stubbs's Const. Hist., ch. 15, pp. 204, 205.

<sup>46</sup> *Id.*, p. 223.

the writ is not merely, as in 1265 and 1283, the reply of the separate towns, but of the county courts in which the elective process is transacted; and the parliament that results contains a concentration of the persons and powers of the shire-moot. In that assembly, on great occasions, the towns had appeared by their twelve burghers; now they appear to make their returns by the sheriff, who thereupon makes his report to the government."<sup>47</sup>

"The knights of the shire represented the community of the shire, which was intermediately represented by the county court; the representatives of the towns represented the community of the several towns intermediately represented by their agents in the county court."<sup>48</sup>

7. *Uncertainty, for a time, as to what should be the estates of the realm; whether the lawyers or the merchants should form an estate.*

'In the uncertainty which for some half century attended the ultimate form in which the estates would rank themselves,' it is observed that "the lawyers and the merchants occasionally seem as likely to form an estate of the realm as the clergy or the knights."<sup>49</sup> As to lawyers, Mr. Stubbs makes the following interesting observations:

"Under a king with the strong legal instincts of Edward I, surrounded by a council of lawyers, the patron of great jurists and the near kinsman of three great legislators, the practice and study of law bid fair for a great constitutional position. Edward would not, like his uncle, Frederick II, have closed the high offices of the law to all but the legal families, and so turned the class, as Frederick did the knightly class, into a caste; or, like his brother-in-law, Alfonso the wise, have attempted to supersede the national law by the civil law of Rome; or, like Philip the Fair, have suffered the legal members of his council to form themselves into a close corporation almost independent of the rest of the body politic; but when the contemporary influences were so strong we can hardly look to the king alone as supplying the counteracting weight. It is perhaps rather to be ascribed to the fact that the majority of the lawyers were still in profession

<sup>47</sup> *Id.*, p. 224.

<sup>48</sup> *Id.*, p. 225. "The institution of electing representative knights for local purposes was in active operation for nearly eighty years before such representatives were summoned to parliament. Those earlier elections were made by the full county court; and in the writs ordering the parliamentary

elections, no words are contained which restrict the liberty heretofore exercised."

*Id.* "The theory of the election was, that it was the act of the shire-moot; that is, of all the suitors of the county court assembled in the county court."  
*Id.*, p. 232.

<sup>49</sup> 2 Stubbs's Const. Hist., ch. 15, p. 189.

clerks;<sup>50</sup> that *Chancery* which was *increasing in strength and wholesome influence*, was administered almost entirely by churchmen, and that the English universities did not furnish for the common law of England any such great school of instruction as Paris and Bologna provided for the canonist or the civilian. Had the scientific lawyers ever obtained full sway in English courts, notwithstanding the strong antipathy felt for the Roman law, the Roman law must ultimately have prevailed, and if it had prevailed it might have changed the course of English history. To substitute the theoretical perfection of a system, which was regarded as less than inspired only because it was not of universal applicability, for one, the very faults of which produced elasticity and stimulated progress and reform, whilst it trained the reformers for legislation, would have been to place the development of the constitution under the heel of the king, whose power the scientific lawyer never would curtail, but when it comes into collision with his own rules and precedents.”<sup>51</sup>

8. *Ancient law books connected with the 13th century: The Register; The Mirror; Bracton; Thornton; Britton; Fleta.*

The ‘Register’ is referred to by *Littleton*<sup>52</sup> and *Fitzherbert*;<sup>53</sup> and is mentioned by Lord *Coke* as “a most ancient book and of great authority in law.”<sup>54</sup> The “antiquity and excellency of this book” are spoken of by him in prefaces to volumes of the Reports,<sup>55</sup> and in the Institutes. In Co. Lit. is the following upon words of Littleton in sect. 9:

“*Come appieit per le Register.* Which book in the statute of W. 2,

<sup>50</sup> Edward I, in 1292, ordered the judges to provide and ordain seven score attorneys and apprentices to practice in the courts; a certain number to be chosen from the best in each county, and all others excluded. (Rot. Parl. i, 84.) Fleta mentions several degrees of practising lawyers, *servientes, narratores, attornati* and *apprentitii*. *Id.*, (2 Stubbs), p. 190, note 2.

<sup>51</sup> *Id.*, pp. 189, 190.

<sup>52</sup> Sect. 9.

<sup>53</sup> F. N. B. (87) I, *et seq.*

<sup>54</sup> Co. Lit., 73 *b*. “Containing all the original writs of the common law;” and “containeth also *brevia judicialia, quæ sæpius variantur secundum varietatem placitorum proponentis et respondentis.*”

*Ibid.* See also *Id.*, 159 *a*.

<sup>55</sup> In one place he says: “I have a Register of our writs, original, written in the reign of King Henry the second (in whose time Glanvill wrote), containing the original writs, which were long before the conquest, as in the” “preface to the third part appeareth, (and yet also remaining in force, such excepted as have been instituted or altered by acts of parliament since that time,) which is the most ancient book yet extant of the common law, and so ancient, as the beginning whereof cannot be showed.” Preface to 8 Rep., pp. xxii and xxiii. See also preface to 10 Rep., pp. xxiv and xxv.

ca. 24,<sup>56</sup> is called *Registrum de cancellaria*, because it containeth the forms of writs at the common law that issue out of the chancery *tanquam ex officinâ justitiæ*. There is a register of original writs and a register of judicial writs; but when it is spoken generally of the register, it is meant of the register original.”<sup>57</sup>

A summary of the laws and usages of England, which Lord Coke entitled the “Mirror of Justices,” is spoken of by him in terms of commendation.<sup>58</sup> He considered that “the most of it was written long before the Conquest;” but that “many things were added thereunto by Horne, a learned and discreet man (as it is supposed), in the reign of E. I.”<sup>59</sup> Of Horne’s work<sup>60</sup> there have been several editions;<sup>61</sup> it was held in higher esteem by Lord *Coke* than by Lord Campbell.<sup>62</sup>

That “our ancestors ordained *one* seal, and *one* chancellor for the keeping of it, to give remedial writs to all, is stated in the Mirror.”<sup>63</sup>

Lord *Coke*, besides mentioning Bracton, speaks of “Britton, who was bishop of Hereford, and learned in the laws of this realm.”<sup>64</sup>

“*Henry de Bracton*, who was in the latter years of the reign of King Henry, the third a considerable judge”<sup>65</sup> and author, had anciently a variety of *names*; he was not only “called Bracton and Brycton and Britton and Briton,” but “likewise by some others.”<sup>66</sup> John Selden states that “with regard both to method and distribution, the *manuscripts* of Bracton’s work greatly differ.”<sup>67</sup>

Henry de Bracton’s work, ‘*De Legibus Consuetudinibus et Angliæ*,’ is quite different from the work called ‘Britton’—a compendium of English law. The former is a finished and systematic performance,

<sup>56</sup> Noticed in ch. 16, § 15, *ante*, p. 403.

<sup>57</sup> Co. Lit., 16 b, 73 b, 159 a; 4 Inst., 79, 140.

<sup>58</sup> Preface to 9 Rep.

<sup>59</sup> Preface to 10 Rep., pp. xxv and xxvi.

<sup>60</sup> ‘*La Somme appellé Mirroir des Justices, Seu Speculum Justiciarium*’. It may have been “in the time of Edward the Second.” John Selden so mentions it in his Dissertation annexed to edition of Fleta in 1647; ch. 1, § 2, pp. 3, 4, of Kelham’s translation, published in 1771.

<sup>61</sup> See ‘Allibone’s Dictionary,’ tit. ‘Horne Andrew.’

<sup>62</sup> Lives of Lord Chancellors, pp. 208, 209, of 2d ed. (1846); p. 200, of Boston ed. 1874.

<sup>63</sup> Cap. 4; cited in Legal Judic. in Ch., ch. 1, p. 20, of ed. 1727.

<sup>64</sup> 2 Inst., 489.

<sup>65</sup> Selden’s dissertation (with edition of Fleta) in 1647, ch. 1, § 3; p. 3 of Kelham’s translation in 1771.

<sup>66</sup> *Id.*, ch. 2, § 2, pp. 11, 12.

<sup>67</sup> *Id.*, ch. 2, § 4, p. 20.

giving, when it was written, a complete view of the law as it then stood. Notwithstanding what is said in 2 Inst., 569, it is considered that Henry de Bracton wrote it, not after 13 Edw. I, nor even after 6 Edw. I, but *before 52 Hen. III*; this is evidenced by the omission therein of regulations made by the statute of Marlebridge.<sup>68</sup> As to the later work—wherein is cited one statute enacted in 6 Edw. I, and another in 13 Edw. I—the better opinion is, that it is “little more than an abridgement of Bracton, with the additions of the subsequent alterations in the law.” It was at one time attributed to John Le Breton, bishop of Hereford, but erroneously; the bishop, who died in 3 Edw. I, could not have written of acts of parliament made ten or three years after his death.<sup>69</sup>

In John Selden's dissertation, annexed to *Fleta*, a manuscript of a compendium or abridgement of Henry de Bracton is mentioned in ch. 2, § 1,<sup>70</sup> and in § 4; in the latter the whole title is as follows:

*“Incipit Summa de legibus et Consuetudinibus Angliæ a Magistro Henrico de Bryctona composita tempore Henrici filii Regis Johannis quam quidem Summam Dominus Gilbertus de Thornton, tunc Capitalis Justitiarius Domini Regis in Anglia secundum statuta et leges tunc usitatas, ad utilitatem posterorum diligenti studio postmodum abbreviavit sub compendio, anno regni Regis Edwardi filii regis Henrici vicessimo. Et ipse idem Dominus Gilbertus tempore illo Scientia, bonitate et mansuetudine floruit eleganter.”*<sup>71</sup>

“The sense is, that Thornton, while Lord Chief Justice, to-wit, under Edward the first, made this compendium and breviary, and that he did this according to the statutes and laws then in force, that is, he gives us Bracton's works, so far as they may be of help to posterity, towards rightly understanding the laws and statutes at that time in force, for he makes no mention of the intermediate statutes themselves made between the time of Bracton and that of his own writing.”<sup>72</sup>—“He, as is usual with epitomizers, passes by a great many things, neither does he always follow Bracton's method, but sometimes another, and makes a different distribution.”<sup>73</sup>

<sup>68</sup> *Id.*, § 2, p. 11; Foss's Biogr. Jurid.

<sup>69</sup> *Id.*

<sup>70</sup> P. 9 of Kelham's translation in 1771.

<sup>71</sup> *Id.*, p. 17. *Gilbert de Thornton* (or de Torenton) was constituted chief justice of the King's Bench in 1289, and was acting as late as August, 1295. Mr. Foss states that Thornton's work “has

never been printed.” Biogr. Jurid.

<sup>72</sup> 3 Ed. I, Wes. 1, c. 49; 6 Ed. I, 1 Gloc., c. 9; 13 Ed. I, 1 W. 2, c. 1; and some others.

<sup>73</sup> Selden's dissertation (with *Fleta* in 1647), ch. 2, § 4, p. 18, of Kelham's translation in 1771.



"We have just reason to believe this abridgement by Thornton to have been penned by the King's command, or at least under his favour; for we read in the annals of our law that this Edward (therein, by mistake of the press, called the second) being desirous of having all the laws and customs of his kingdom reduced into writing, did, for that purpose, by the assistance of the most eminent lawyers in his reign, compile, and that in his own name, some other books besides the celebrated one of Britton."<sup>74</sup>

Though Thornton contains nothing subsequent to the time of Bracton, yet there was a French compendium of Bracton with some of the subsequent laws of Edward the first inserted, called Britton or Breton. John Selden had "a very ancient copy of that French tract or compendium."<sup>75</sup>

He considered "that the name of Henry de Bracton, or Breton, in this book commonly called Britton and Breton, is to be understood as of that of the primary author of the work, tho' enlarged with some matters of a later date than his time."<sup>76</sup>

"A view of the law of England such as it anciently was under Edward the first," is also exhibited by the author of *Fleta*."

"*Fleta* has indeed many things so very like what's contained in Bracton and Thornton, that he frequently makes use of their very words; yet he, at the same time, especially in his second book, delivers many other matters which are" not "to be found in them."<sup>77</sup>

Selden was convinced that *Fleta* was written in the reign of Edward the first; that "it, as well as the sum of Thornton, and the compendium called Britton, were some of the works compiled by the most

<sup>74</sup> *Id.*, pp. 21, 22. Selden regards Edward as intimating "that he himself was, as it were, the author of it" (Britton), "as much, at least, as Justinian was of the Tribonian collections, and that it was then to be understood from the throne that he had in the aforesaid book instructed the judges and the rest of the lawyers in the laws and customs of England." Selden adds: "Neither is Thornton a bare epitomizer, but sometimes also an excellent interpreter and expositor of Bracton." *Id.*, p. 24.

<sup>75</sup> Selden's dissertation (with edition

of *Fleta*) in 1647; ch. 1, § 2, p. 3, and § 3, pp. 15, 16, of Kelham's translation. The distinction between Thornton's book, and that called Britton, is again adverted to in *Id.*, ch. 10, § 4, pp. 269, 270, of translation.

<sup>76</sup> *Id.*, ch. 2, § 3, p. 16, of translation.

<sup>77</sup> Nor in any other author that John Selden had perused in or before 1647. So stated in his dissertation (with edition of *Fleta*) in 1647, ch. 1, § 2; p. 3 of translation in 1771; also *Id.*, ch. 2, § 1, p. 9.

famous lawyers, at the command of Edward the first;"<sup>78</sup> and that Fleta was "wrote in the Flete."<sup>79</sup> The volume contains the following passage:

*"Est inter cætera quoddam officium quod dicitur cancellaria quod uno viro provido & discreto ut episcopo vel clerico magnæ dignitatis debet committi simul cum cura majoris sigilli."*<sup>80</sup>

The author relates "that to the chancellor are associated honest and circumspect clerks, who have a full knowledge in the laws and customs of England, whose duty it is to hear and examine the petitions and complaints of complainers or plaintiffs, and according to the qualities shewn, to give them due remedy by the King's writ. And then he goes on to shew the several sorts of writs, some formed according to the case of the party, others *de cursu* or of course; that as to those writs which are varied according to the diversity of the case, they are called *magistralia*, which plainly refers to the act of parliament, 13 E. I. 'that when it shall happen in chancery that in one case is found a writ, and there is not found a writ in the like case falling under the same right, and wanting the like remedy, *concordent clerici de cancellaria in brevi faciendo*;' i. e., let the clerks in chancery agree in making out a writ; which clerks were the masters in chancery; and the writs formed by them on this statute were from thence called *brevia magistralia*, to distinguish them from *brevia de cursu*, that is, from the writs made out of course by the cursitors."<sup>81</sup>

There is a new edition of Britton;<sup>82</sup> in the introduction to which, the editor, speaking of Britton and Fleta, says:

"A comparison of the parallel passages in the two treatises has led me to the conclusion that Fleta was first written, and that this book, as well as Bracton, was in the hands of the author of Britton, who appears to have more frequently made use of the compendium of Fleta than of the larger work."<sup>83</sup>

<sup>78</sup> *Id.*, ch. 10, §§ 1, 2, p. 255 to 260. Mr. Turner concurs that Fleta was written under Edw. I. Hist. of Anglo Saxons, book 8, ch. 3, p. 143, of ed. 1852. It seems probable that the author did not live at so late a period as is supposed in 2 Fuller's Worthies, pp. 366, 367.

<sup>79</sup> "That most noted prison which we, from the little river running by it, call the Fleet."—"If Cicero had called his Tusculan questions Tusculum, he had done it for the same reason as our author named his book Fleta." § 3, page 261

to 265 of Selden's dissertation before mentioned.

<sup>80</sup> Fleta lib. 2, c. 13, p. 75; cited in Legal Judic. in Ch. 20, of ed. 1727.

<sup>81</sup> Ch. 3, pp. 66, 67, of Legal Judic., in Ch., ed. 1727; citing Fleta lib. 2, c. 13, pp. 75, 76.

<sup>82</sup> "The French text carefully revised with an English translation, introduction and notes, by Francis Morgan Nichols, M. A., of Lincoln's Inn, barrister at law, formerly fellow of Wadham College," Oxford, 1865.

<sup>83</sup> *Id.*, p. xxvii.

"The important place occupied by Britton in the series of our ancient law-writers, depends mainly upon two peculiarities; first, the royal authority under which the book assumes to be promulgated; and secondly, the fact that it was the first great treatise upon our law written in the vernacular language of the courts—the first of the series of books to which the works of Littleton, Fitzherbert and Plowden belong."<sup>84</sup>

*9. How Roman law came into use, in England, in the thirteenth century; and then gave a rule which has been followed.*

In the 'Translator's Preface' to Domat's Civil Law,<sup>85</sup> there is this passage:

"We see in the most ancient books of the common law, as Bracton, Thornton and Fleta, that the authors thereof have transcribed, one after another, in many places, the very words of Justinian's institutes."

Of these English authors, Bracton is the most important. Azon, or Azo, a professor of law at Bologna, who acquired an extraordinary reputation as a teacher,<sup>86</sup> was the preceptor of Franciscus Accursius, the father;<sup>87</sup> and Azo's commentary was made use of by Bracton.<sup>88</sup>

Selden considered it plain, from citations and arguments by Bracton, Thornton, and the author of Fleta, that some kind of use "of the imperial law and of the books containing it, prevailed among our ancestors in that age in decisions that were to be determined by the law of England."

"Not that they thought this realm subject to the Roman Emperors, or to the imperial law; or that our policy any way depended upon it, or that the law of England, which had long before been established, either in writing or by custom, could receive any alteration from it (they themselves, in several places, informing us that our own law, where it widely differs from, and even is plainly repugnant

<sup>84</sup> *Id.*, p. xxviii.

<sup>85</sup> London ed., 1722.

<sup>86</sup> "In a personal dispute he threw a candlestick at the head of his opponent, who died in consequence. Azon was taken up and tried; but as the catastrophe was not meditated, when he came to receive judgment, he cried out *Ad Bestias*, meaning that in a law bearing this title, his pardon would be found.

Of this, however, the judges were ignorant; and thinking that he called them *beasts*, they sentenced him to death, and deprived his remains of the rites of sepulture." This is said to have happened in 1200 or 1225. Watkins's Biogr. Dict., Lond. ed., 1822.

<sup>87</sup> As to him, see ch. 16, § 5 and § 7.

<sup>88</sup> 1 Spence's Eq., 131.

to the imperial law, is to be followed); but all they meant was that where an express right was wanting in our own law, recourse might then be had to the rule of the civil law, as far as grounded on reason; and when both laws were conformable to each other, that then the matter in debate was, in some measure, confirmed or explained by the words of the imperial law.”<sup>89</sup>

In another chapter Selden says:

“As it is certain that the clergy in that age filled up among us the chief places, even in the King’s courts of justice, it can’t be doubted but that from the use of this law by the ecclesiastics it gradually also gained ground in those courts; and that it was manifestly, as such; applied in discussing of causes.”<sup>90</sup>

Mr. Reeve praises Bracton’s style as clear, expressive and nervous; and resists the attempt to throw discredit on his fidelity as a writer on the English law which has been grounded on his reference to the Roman Code.<sup>91</sup> The common law was much improved in Bracton’s time; the “improvement was made by incorporating much of the civil law into the common law.”—“Many of the maxims of the common law, borrowed from the civil law, are still quoted in the language of the civil law.”<sup>92</sup>

In the House of Lords, in 1828, *Best*, C. J., said: “Notwithstanding the clamour raised by our ancestors for the restoration of the laws of Edward the Confessor, I believe that these, and all the other Saxon and Norman customs, would not have been adequate to form a system of law sufficient for the state of society in the times of Henry III. Both courts of justice, and law writers, were obliged to adopt such of the rules of the digest as were not inconsistent with our principles of jurisprudence.”<sup>93</sup>

In 1875, in the Common Pleas division, *Brett*, J., said: “No one who has read the treatise of Mr. Justice *Story* on Bailments, the essay of Sir *William Jones*, and the judgment of *Ld. Holt* in *Coggs v.*

<sup>89</sup> *Id.*, ch. 3, § 5, pp. 48, 49. The mandate dated at Basing, Dec. 11, in 19 Hen. III (1234), is remarked on in *Id.*, ch. 8, § 2, pp. 199, 200; also in ‘proeme’ to 2 Inst. and 1 Bl. Com., 24.

<sup>90</sup> Selden’s dissertation (with Fleta) in 1647, ch. 8, § 2, p. 208, of translation in 1771.

<sup>91</sup> Hist. of Eng. Law, ii, 86, 88; Foss’s Biogr. Jurid.

<sup>92</sup> Hale’s Hist. of Com. Law, ch. 7; *Parker*, C. B., Fort., 408; *Best*, J., in *Blundell v. Catterall*, 5 Barn & Ald. 268, 7 Eng. C. L.; *Rex v. Yarborough*, 2 Bligh, N. S., 160, 161; S. C. (*Gifford v. Yarborough*), 5 Bingh., 163, 15 Eng. C. L.

<sup>93</sup> S. C., 2 Bligh, N. S., 161; 1 Spence’s Eq., 123; *Id.*, pp. 131, 132, note.

*Bernard*,<sup>94</sup> can doubt that the common law of England as to bailments, is founded upon, though it has not exactly adopted, the Roman law. It is true that *Ld. Holt* rests as for authority solely on Bracton; but the treatise of Bracton adopts all the divisions of the Roman law in the very words of the Roman text, and farther adopts the exception of the Roman law and the Roman reasons for it." He considered it "obvious, therefore, that Bracton, or English judges before him, adopted into the English, the Roman law."<sup>95</sup>

10. *In the register of writs, 'the ancientest book in the law,' notice is taken of the Master or Keeper of the Rolls and of the other Masters. Equity is old: but of the chancery as a court of equity there is no mention by Glanville, the Mirror, Bracton, Britton, or Fleta. The date of the book called 'Diversite des Courtes,' remarked on.*

There is no doubt but the office of Master or Keeper of the Rolls is an ancient office of dignity and preëminence. In the Register of Writs, 'the ancientest book in the law,' notice is taken of the Keeper of the Rolls; and of the Masters.<sup>96</sup> Writs of error brought on judgments given on the *law* side in chancery are directed to the Master of the Rolls, because he has the keeping of the records on which such writs are brought.<sup>97</sup>

"*Equity* is as old as *Bracton*,<sup>98</sup> who, fo. 23<sup>b</sup>, distinguishes how it would be *secundum æquitatem*, and how *secundum rigorem juris*;"<sup>99</sup> and in fol. 18, says, "*Nihil tam conveniens est naturali æquitate quam voluntatem domini volentis rem suam in alium transferre ratam haberi.*"<sup>100</sup>

But "our ancient writers, as Bracton, Briton, Fleta, mention nothing of" the court of chancery, as a *court of equity*; "neither, indeed, could they, because it was then not in being."<sup>101</sup> This is not controverted by Mr. Stubbs. He says:

"Neither Glanvill, the Mirror, Bracton, Briton, Fleta, nor the 'Di-

<sup>94</sup> 2 *Ld. Raym.*, 909, 1 *Salk.*, 16.

<sup>95</sup> *Nugent v. Smith*, *L. R.*, 1 *C. P. D.*, 28, 29.

<sup>96</sup> *Ch.* 5, p. 187, of *Legal Judic.* in *Ch.*, edi. 1727. <sup>97</sup> *Id.*, pp. 190, 191.

<sup>98</sup> Whose work is supposed to have been written before 52 *Hen. III.*, that is, before 1268.

<sup>99</sup> *Sir Thomas Clarke*, Master of the Rolls in 1759, in *Burgess v. Wheate*, 1 *W. Bl.*, 136; 1 *Eden*, 194.

<sup>100</sup> Cited by Lord *Coke* in 23 *Eliz.*, in *Shelley's case*, 1 *Rep.*, 100.

<sup>101</sup> *Leg. Judic.* in *Ch.*, ch. 2, p. 24, of edi. 1727; 1 *Eq. Cas. Abr.*, 129, note (a); 3 *Bl. Com.*, 50.

versité des Courtes' ever allude to the Chancery as a *court of equity*; Hardy Close Rolls, I pref., p. xxiii. Yet the distinction was recognized between law and equity as early as the time of Glanvill, and was inherent in the double character of the judicature; and Fleta (ii, 13) mentions the hearing of petitions as one of the principal duties of the chancellor and his clerks, '*quorum officium sit supplicationes et querelas conquerentium audire et examinare, et eis super qualitatibus injuriarum ostensarum debitum remedium exhibere per brevia regis.*'"<sup>102</sup>

The book called 'Diversité des Courtes,' thus referred to by Mr. Stubbs, in his 15th chapter—which is of 'the system of estates, and the constitution under Edward I'—is mentioned by Lord Coke as "written in the reign of E. 3;"<sup>103</sup> and by another learned writer as 'writ in the time of H. 8.'<sup>104</sup> Lord Campbell says:

"The first law book which treats of the judicial powers of the Lord Chancellor, is the 'Diversité des Courtes,' written in the end of the fifteenth or beginning of the sixteenth century.'<sup>105</sup>

Which of these writers is least inaccurate, as to this matter, the author of the present work does not now undertake to say.<sup>106</sup>

11. *The National Council as it had been before, compared with the National Council as it remained at, the end of the reign of Edw. I; the three bodies or estates of which the parliamentary assembly consists; its power, not only of taxation and legislation, but in other matters which could not be redressed by ordinary course of law.*

"The National Council," as traced "through the reign of Henry II, Richard I, and John, was an assembly of archbishops, bishops, abbots, priors, earls, barons, knights and freeholders, holding in chief of the crown."<sup>107</sup>—"The national council, as it existed at the end of the reign of Edward I, was a parliamentary assembly, consisting of three bodies, the clergy, represented by the bishops, deans, archdeacons and proctors; the baronage, spiritual and temporal; the commons of the realm, represented by the knights of the shire, and

<sup>102</sup> 2 Stubbs's Const. Hist., ch. 15, pp. 268, 269, note 3.

<sup>103</sup> 2 Inst., 552.

<sup>104</sup> Legal Judic. in Ch., ed. 1727 ch. 4, p. 104. In *Id.*, on p. 105, the note refers to 'Diversité des Courts, ed. 1561, p. 104 a.'

<sup>105</sup> 1 Lives of Chancellors, p. 8, of 2d

edi. (1846), p. 7, of Boston edi., 1874.

<sup>106</sup> He has not yet seen a copy of 'Diversité des Courtes'; and does not know where one can be found in the United States.

<sup>107</sup> 2 Stubbs's Const. Hist., ch. 15, p. 194.

the elected citizens and burgesses, and in addition to all these, as attendant on the king and summoned to give counsel, the justices and other members of the continual council."<sup>108</sup>

In 1297, the confirmation of the charters recognized on the king's part the exclusive right of the parliament to authorize taxation;<sup>109</sup> already the right of the commons to a share in the taxing power of parliament, was admitted.<sup>110</sup>

"It has been well remarked that whereas, for his political work, Edward found himself obliged to obtain the coöperation of the three estates,<sup>111</sup> his legislative work was done without the coöperation of the commons, until, on the question of taxation, they had enforced their right to be heard."<sup>112</sup>—"The commons had now" (at least from 1307) "a share of the '*commune concilium regni*,' which was indispensable to the abrogation or amendment of a law."<sup>113</sup>

The king "called together the assembly when and where he chose; the result of the deliberations was realized as his act; the laws became valid by his expressed consent, and were enforced under his commission and by his writ; his refusal stayed all proceedings, whether legislative or executive."<sup>114</sup>

The proclamation by which the parliament was called together invited "all who had any *grace to demand* of the King in parliament,

<sup>108</sup> *Id.*

<sup>109</sup> "V. For so much as divers people of our realm are in fear that the aids and tasks which they have given to us before time towards our wars and other business, of their own great and good will, howsoever they were made, might turn to a bondage to them and their heirs, because they might be at another time found in the rolls, and so likewise the prises taken throughout the realm by our ministers,—we have granted for us and our heirs, that we shall not draw such aids, tasks nor prises into a custom, for any thing that hath been done heretofore, or that may be found by roll or in any other manner."

"VI. Moreover we have granted for us and our heirs, as well as to archbishops, bishops, abbots, priors and other folk of holy church, as also to earls, barons, and to all the commonalty of the land, that for no business from hence-

forth will we take such manner of aids, tasks nor prises but by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed." Select Charters, p. 486.

<sup>110</sup> 2 Stubbs's Const. Hist., ch. 15, p. 244.

<sup>111</sup> *Id.*, p. 246; citing Shirley, Royal Letters, ii pref., xxii.

<sup>112</sup> 2 Stubbs's Const. Hist., ch. 15, p. 246. The statute *quia emptores* was passed (in 1290) in a council at which no representatives of the commons attended; the statute of Carlisle was published (in 1307) after deliberation, not only with the magnates, but with the '*communitates*' of the realm. *Id.*, p. 246.

<sup>113</sup> *Id.*, p. 247. But the Commons never participated in the trial of great offenders or the determination of great causes. *Id.*, p. 248.

<sup>114</sup> *Id.*, p. 253.

or any *plaint to make of matters which could not be redressed or determined by ordinary course of law*, or who had been in any way aggrieved by any of the King's ministers, or justices, or sheriffs, or their bailiffs, or any other officer, or have been unduly assessed, rated, charged or surcharged, to aids, subsidies or taxes," to deliver their petitions to receivers who sat in the Great Hall of the palace of Westminster.<sup>115</sup>

12. *Of institutions antecedent to the high court of parliament; especially of the ancient court and council of the king, which was the parent of the House of Lords. Functions of the king's council connected with judicature and legislation; especially in hearing suits and petitions.*

There still remained, in varying strength, the several institutions out of which the parliamentary constitution sprang; whose powers it concentrated and regulated, but did not extinguish.<sup>116</sup>

"The high court of parliament had for one of its historical antecedents, the ancient court and council of the king, which was as certainly the parent of the house of lords, as the shire system was of the house of commons."<sup>117</sup>—"The political status of the" paliametary baronage "is thus defined by their successors: 'the hereditary peers of the realm claim, 1, in conjunction with the lords spiritual, certain powers as the king's permanent council when not assembled in parliament; 2, other powers, as lords of parliament, when assembled in parliament, and acting in a judicial capacity; and, 3, certain other powers when assembled in parliament together with the commons of the realm, appearing by their representatives in parliament, the whole now forming under the king the legislature of the country.'"<sup>118</sup>

"Side by side with the growth of the power of parliament, grew" "the power of the crown, exercised in and through the council."<sup>119</sup>—"From the accession of Henry III a council comes into prominence which seems to contain the officers of state and of the household, the whole judicial staff, a number of bishops and barons, and other members who, in default of any other official qualification, are simply counsellors; these formed a permanent, continual or resident council, which might transact business from day to day, ready to hold special sessions for special business, to attend the king in parliament and act

<sup>115</sup> Green's Short Hist., ch 4, § 2, p. 201; 1 Hist. Engl. Peop., book 3, ch. 4, p. 360, of vol. 1.

<sup>116</sup> 2 Stubbs's Const. Hist., ch. 15, pp. 253, 254.

<sup>117</sup> *Id.*, p. 254.

<sup>118</sup> *Id.*, p. 184; citing Lords' Report, i, 151.

<sup>119</sup> 2 Stubbs's Const. Hist., ch. 15, p. 255.



for him; but the distinguishing feature of which was its permanent employment in the business of the court."<sup>120</sup>—"Edward's absence from England, at his accession, left the power in the hands of his father's advisers. He seems thus to have accepted the institution of a council as a part of the general system of government, and whatever had been the stages of its growth, to have given it definiteness and consistency. It is still uncertain whether the baronage generally were not, if they chose to attend, members *ex officio*, but it is quite clear that where no such qualification existed, members were qualified by oath and summons."<sup>121</sup>

"Edward I, in the preamble of several of his statutes, some of which were distinctly the result of deliberation in the general parliament, mentions the participation of the council as well as that of the assembled estates."<sup>122</sup>

Adverting to the fact that the word council 'means several differently organized bodies and the several occasions of their meeting,' Mr. Stubbs thinks we may generalize thus:

"1. There was a permanent council attendant on the king and advising him in all his sovereign acts, composed of bishops, barons, judges and others, all sworn as counsellors; and this council, sitting in terminal courts, assisted the king in hearing suits and receiving petitions. 2. In the parliaments of the three estates, from the year

<sup>120</sup> *Id.*, pp. 256, 257.

<sup>121</sup> *Id.*, p. 258. It seems to be a fair conclusion that the council "now contained all the judges and officers of the household, although the former at least would not be able to keep continual residence. At any rate it was as members of the royal council that the judges were, from the year 1295, summoned to the parliaments and great councils of the kingdom." *Id.*, p. 258.

<sup>122</sup> *Id.*, p. 264. "The first statute of Westminster was enacted by the king *par son conseil*, and by the assent of the magnates and community: the statute *de religiosis* is made *de consilio prælatorum comitum et aliorum fidelium regni nostri de concilio nostro existentium*; the statute of Acton-Burnell is an enactment by the king, *par luy e par sun conseil a sun parlement*. In such cases it seems impossible to understand by the *conseil* merely the advice of the persons who

are afterwards said to have consented. In other cases, however, the king enacts, or ordains by his council, when the action of parliament is altogether unnoticed. The statute of Rageman is 'accorded by the king and by his council;' the statute 'de Bigamis' rehearses the names of a sort of committee of councillors, in whose presence the draft of it was read before it was confirmed by the king and the entire council. It would seem certain from this that the king in his council made ordinances, as by the advice of his council he enacted laws, with consent of parliament." *Id.* Mr. Stubbs marks "the end of the reign of Edward in England, and the period of Philip the Fair in France, as the point at which the two constitutions approximated more nearly than at any other in the middle ages." *Id.*, p. 265.

1295 onwards, the judges and other legal members of this permanent body, who did not possess the rights of baronage, were summoned to advise the king. 3. In conjunction with the rest of the prelates and baronage, and excluding the commons and the minor clergy, the permanent council acted sometimes under the title of *magnum concilium*; and this name was occasionally given to assemblies in which the council and the estates met, which are only distinguishable in small technical points from proper parliaments."<sup>123</sup>

"Whilst the constitutional reforms of Edward I were gradually taking their final shape, it is not surprising that some confusion should arise between the functions of the king's council and those of the national council. In both we find the king legislating, judging, deliberating and taxing or attempting to tax. If in the one he enacted laws and in the other issued ordinances, if in the one he asked for an aid and in the other imposed a tallage or negotiated the concession of a custom, the ordinance and the statute differed little in application; the voluntary contribution and the arbitrary tallage were demanded with equal cogency from the tax payer."—"In general, it may be affirmed that for all business, whether it were such as could be done by the king alone, or such as required the coöperation of the nation, the action of the smaller circle of advisers was continually employed."<sup>124</sup>

"The petitions, addressed to the king, or to the king and his council, which are preserved in the early rolls of parliament, furnished abundant work to the permanent council; and the special parliaments were probably the solemn occasions on which they were presented and discussed. These stated sessions were held by Edward I at Hilarytide, Easter and Michaelmas, or at other times by adjournment. At them were heard also the great placita or suits, which, arising between great men or in unprecedented cases, required the judgment of the king himself."<sup>125</sup>—"The placita on these occasions were either relegated to small bodies of auditors who reported their opinion to the council, or were heard in the full council itself."<sup>126</sup>

13. *Especially of the court of chancery; not only as officina justitiæ; but also in respect to the origin of its jurisdiction as a court of equity.*

In the Chancery are two courts, or rather two manners of power;

<sup>123</sup> *Id.*, p. 260.

<sup>124</sup> *Id.*, p. 261.

<sup>125</sup> "The general parliaments, which were of course much less frequent, were, for the sake of convenience and economy, usually called at times when the council was in session; a fact which has increased the difficulty of distinguishing the acts of the two bodies." *Id.*, p. 262.

<sup>126</sup> *Id.*, p. 262. Mr. Stubbs observes, that, "Of the former sort, were the suits between the abbot of St. Augustine and the barons of Sandwich, in 1280, and between the men of Yarmouth and the Cinque Ports in 1290, in which a small number of councillors were assigned as auditors; of the latter was the claim of Gilbert of Clare to the castle and town

the one ordinary, wherein the proceedings are according to the laws and statutes of the realm; the other extraordinary, according to the rules of equity, *secundum aequum et bonum*."<sup>127</sup>

"The one, ordinary," was referred to when it was said "all original writs are awarded out of the chancery by the chancellor."<sup>128</sup> In more than one place, Lord *Coke* speaks of the court of chancery as '*officina justitiæ*.'<sup>129</sup> He was treating of 'Articuli super Chartas,' ch. 1 (28 Edw. I), when he said,

"In 'those days not only original writs *in regist. cancellariæ*, but all commandments upon any occasion for the safety of the realm, in the good government thereof, were by writs, and passed under the Great Seal."<sup>130</sup>

"The court of chancery, as it is a court of equity, proceeding *secundum aequum et bonum*, and not according to the rules and order of law, is recent and modern," in comparison with "the law side."<sup>131</sup>

Yet "the distance and obscurity of the matter" have been impediments, when it has been attempted to "enquire into the rise and progress of the course of equity, in the court of chancery."<sup>132</sup>

There have been opinions (and one who was, in 5 Geo. I, at the bar, and afterwards one of England's greatest chancellors,<sup>133</sup> was apt to believe a strict search into antiquity might shew) that the jurisdiction of the court of chancery as a court of equity took its rise from the Great Seal.

"For" (he said) "the chancery being upon the division of the King's courts, naturally the *officina justitiæ*, from which all original writs issued, and where the subject was to come for remedy in all cases, the chancellor was applied to in all cases for proper writs, where the subject wanted a remedy for his rights or redress for a wrong that has been done him. But, in the execution of this authority, he was confined by the rules of the common law, and could

of Bristol, and the king's demand of a sentence against Llewelyn at Michaelmas, 1276, both of which were heard and decided in full council, composed of magnates, justices and others, whose names are recorded." *Id.*, p. 262.

<sup>127</sup> Legal Judic. in Ch., p. 8, and p. 21, of edi. 1727; citing 4 Inst., 79.

<sup>128</sup> 6 Edw. VI, *Wimbish v. Willoughby*,

Plowd. 74; cited in Legal Judic. in Ch., p. 21, of edi. 1727.

<sup>129</sup> 2 Inst., 552; 4 *Id.*, 80.

<sup>130</sup> 2 Inst., 552.

<sup>131</sup> Legal Judic. in Ch., ch. 2, p. 24, of edi. 1727.

<sup>132</sup> *Id.*, p. 25.

<sup>133</sup> Philip Yorke, who became Lord Chancellor Hardwicke.

award no writs but such as the common law warranted: Therefore when such a case came before him, as was matter of trust, fraud or accident (which are the subjects of an equity jurisdiction) the chancellor could award no writ proper for the plaintiff's case; because the common law afforded no remedy. Upon this it is not improbable that the chancellors, who were most commonly churchmen, men of conscience, when they found these cases grew numerous, in order to prevent the suiters from being ruined against right and conscience, and that no man might go away from the King's court without some relief, summoned the parties before them, and partly by their authority, and partly by their admonitions, laid it upon the conscience of the wrong-doer to do right."<sup>134</sup>

This argument of Philip Yorke is affected by the history of judication in parliament and the jurisdiction of the council, as related in the two preceding sections (eleven and twelve.) Those sections, so far as they show that in the constitution of the kingdom, the power of justice, according to the rule of equity, was in the king as sovereign, and administered by the king through his parliament or council, have a material bearing upon the rise and progress of the administration of equity in the court of chancery.<sup>135</sup>

"In the time of E. I, *matters of grace* were only determinable by the King, or by such as he appointed, and not in any formed or established court of equity."<sup>136</sup>

"The method of applications for relief in those cases was by bills or petitions to the King, sometimes in Parliament, sometimes out of Parliament, commonly directed to him and his council; and the granting them was not esteemed a matter of right, but of *grace and favour*."<sup>137</sup>

The practice in early years of the reign of Edw. I, is shown by

<sup>134</sup> *Rex v. Hare & Mann*, 1 Str. 150; "a remarkable cause of Sir Robert Walpole's," argued by Philip Yorke in 5 Geo. I. Of this argument he says (in a letter to Lord Kaimes): "It was made when I was a very young advocate, before I was Solicitor General, but it is correctly reported, for I remember Sir John Strange borrowed my papers to transcribe, so that the faults in it are all my own." He mentions that he "had not then seen my Lord Hale's manuscript." Harris's Life of Hardwicke,

vol. 1, ch. 2, p. 75.

<sup>135</sup> 1 Roll. abr., tit. *Chancery*, p. 373 to 383; *Id.*, tit. *Chancellor*, p. 384; 4 Vin. abr., tit. *Chancellor*, p. 374 to 378; *Id.*, tit. *Chancery*, p. 378 to 448; Bac. abr., tit. *Court of Chancery*, p. 447 to 455, of Lond. edi. 1832; *Martin v. Marshal, &c.*, Hob. 63; 2 Stubbs's Const. Hist., ch. 14, p. 262-264, ch. 17, p. 572.

<sup>136</sup> Legal Judic. in Ch., ch. 2, p. 28, of edi. 1727.

<sup>137</sup> *Id.*, p. 26.

specimens (from records in the Tower) of petitions, with answers endorsed thereon.<sup>138</sup>

The Chancellor had long been as a baron of the Exchequer, and as a leading member of the Curia in possession of judicial functions.<sup>139</sup> In 5 Ed. I, there is "a writ of Privy Seal directed to the Chancellor and the Master of the Rolls, endorsing a petition, and requiring them to give such remedy as to them should appear to be consonant to honesty."<sup>140</sup>

"When a Parliament met, there were usually petitions of all sorts and kinds preferred to the King, and the distinguishing of these petitions, and, giving proper answers to them, occasioned a weight and load of business, especially when parliaments sat but a few days;"<sup>141</sup> and therefore was made, in 8 Edw. I, an ordinance.

Wherein it is recited "that the people who came to parliament were often delayed and disturbed to the great grievance of them and of the court by the multitude of petitions laid before the King, the greatest part whereof might be dispatched by the Chancellor and by the Justices: therefore it is provided that all the petitions which concern the Seal shall come first to the Chancellor; and those which touch the Exchequer to the Exchequer; and those which concern the Justices, and the law of the land, to the Justices; and those which concern the Jews to the Justices for the Jews; and if the affairs are so great, or if they are of Grace, that the Chancellor and others cannot do it without the King, then they shall bring them with their own hands before the King, to know his pleasure; so that no petitions shall come before the King and his Council but by the hands of the said Chancellor and other chief ministers; so that the King and his Council may, without the load of other business, attend the great business of his Realm and of other foreign countries."<sup>142</sup>

This ordinance is remarked on by Lord Campbell,<sup>143</sup> and Mr. Stubbs;<sup>144</sup> the latter saying, "At this period, then, the Chancellor,

<sup>138</sup> 1 Campbell's *Lives of Chancellors*, end of ch. 11, pp. 189, 190, of second Lond. ed. (1846.)

<sup>139</sup> 2 Stubbs's *Const. Hist.*, ch. 15, p. 234.

<sup>140</sup> 1 Campbell's *Lives of the Chancellors*, end of ch. 11, p. 190, of 2d ed. (1846.)

<sup>141</sup> *Legal Judicature*, ch. 2, pp. 26, 27, of ed. 1727; Hardy's *Close Rolls*, pp.

107, 108.

<sup>142</sup> Ryley's *Placita Parliamentaria*, p. 442; cited in *Legal Judic.*, ch. 2, pp. 27, 28, of ed. 1727.

<sup>143</sup> In 1 *Lives of the Chancellors*, at the end of ch. 11, p. 190, of 2d ed. (1846.)

<sup>144</sup> 2 Stubbs's *Const. Hist.*, ch. 15, pp. 262, 263, and p. 268.

although employed in equity, had ministerial functions only.”<sup>145</sup> The practice between 8 Edw. I, and 21 Edw. I, is indicated by the subjoined cases.<sup>146</sup>

“Since the fall of the great justiciar, the chancellor was in dignity, as well as in power and influence, second to the king. *Robert Burnell* was the first great chancellor, as *Hubert de Burgh* was the last great justiciar.”<sup>147</sup>

Burnell's successor (*John de Langton*) immediately upon his appointment (in December, 1292) published an ordinance in the king's name for the more regular dispatch of business.

“That in all future parliaments, all petitions shall be carefully examined, and those which concern the chancery shall be put in one bundle, and those which concern the exchequer in another, and those which concern the justices in another, and those which are to be before the king and his council in another, and those which are to be answered in another.”<sup>148</sup>

After this ordinance were the subjoined cases.<sup>149</sup> The separate

<sup>145</sup> *Id.*, p. 268.

<sup>146</sup> In Campbell's *Lives of the Chancellors*, ch. 11, p. 190, of 2d ed. (1846.)

“18 Ed. I. Convents of London pray the King to appoint a skilful custos over them.

Resp. ‘Preceptum est Cancellario quod provideat de idoneo custode.’

18 Ed. I. The king's tenants of Aulton complain that Adam Gordon ejected them from their pasture contrary to the tenor of the King's writ.

Resp. ‘Veniant partes coram Cancellar. et ostendat ei Adam quare ipsos eiecit et fiat eis justitia.’

18 Ed. I. The men of Grendon complain to the King, &c.

Resp. ‘Cancellar. vocat justic. provideat eis remedium et aliis in hoc casu perpetuo duratur.’”

<sup>147</sup> 2 Stubbs's *Const. Hist.*, ch. 15, p. 269.

<sup>148</sup> 1 Campbell's *Lives of the Chancellors*, ch. 11, p. 177, of ed. 1846, and p. 170, of Boston ed. 1874; citing

clause 21, Edw. I, M. 7. The same clause and Ryley, *Pleadings*, p. 459, are cited in 2 Stubbs's *Const. Hist.*, ch. 15, p. 263.

<sup>149</sup> In Campbell's *Lives of the Chancellors*, ch. 11, p. 190, of 2d ed. (1846.)

“33 Ed. I. Petition concerning concealment of dower.

Resp. ‘Veniant coram cancellario et respondeant Regi de concealamento et ibi fiat remedium tam pro Rege quam pro petente.’

33 Ed. I. Petition of the clerks and canons of the free chapel in the castle of Hastings, disputing the claim of ordinary jurisdiction by the archbishop of Canterbury.

Resp. ‘Ita responsum est. Vocetur coram Cancellario et audiat ille qui sequitur pro Rege.’

35 Ed. I. Petition of Henry Gare and others.

‘In responsum est. Qura testatum est per Cancellar. et clericos Cancellar. quod quando, &c.’”

powers of the chancellor, though they may not have been 'thoroughly established' at so early a date as Mr. Green seems to suppose,<sup>150</sup> yet became established before or about the end of the fourteenth century, and will be noticed in chapter 21.

14. *Of Great men in the thirteenth century; to whom credit is due for the constitution that emerges from the struggle in this century; of kings and ministers; the barons, clergy and people.*

"The thirteenth century was a period unparalleled in medieval history for brilliancy and fertility. It abounded with great men,—kings, statesmen and scholars."—"The long reign of Henry III extends over more than one-half of this wonderful age."<sup>151</sup>

"Little as can be said for Henry III himself, there was much vitality and even administrative genius in the system of government during his reign. Local institutions flourished, although the central government languished under him. Some of his bad ministers were among the best lawyers of the age. *Steven Seagrave*, the successor of *Hubert de Burgh*, was regarded by Bracton as a judge of consummate authority;<sup>152</sup> *Robert Burnell* and *Walter de Merton*, old servants of Henry, left names scarcely less remarkable in their own line of work than those of Grosseteste and Cantilupe."<sup>153</sup>

"No doubt these men had much to do with Edward's early reforms. We can trace the removal of Burnell's influence in the more peremptory attitude which the king assumed after his death; and the statesmanship of the latter years of the reign is coloured by the faithful but less enlightened policy of *Walter Langton*. But notwithstanding all this, the marks of Edward's constitutional policy are so distinct as to be accounted for only by his own continual intelligent supervision."<sup>154</sup>

<sup>150</sup> Green's Hist. of Engl. Peop., book 3, ch. 4, pp. 327, 328, of vol. 1.

<sup>151</sup> Select Charters, part vi, p. 307.

<sup>152</sup> 2 Stubbs's Const. Hist., ch. 15, p. 294. Mr. Stubbs notes "that Bracton, although himself clearly a constitutional thinker, gives the preference in almost all cases to the decisions of *Stephen Seagrave*, the justicier of Henry III, who supplanted *Herbert de Burgh*, and was practically a tool of the foreign party." Mr. Stubbs considers it "clear that Seagrave, although a bad minister, was a first rate lawyer." *Id.*, p. 190, note 3.

<sup>153</sup> *Id.*, p. 294.

<sup>154</sup> *Id.*, p. 294. "If his policy had been only Burnell's, it must have changed when circumstances changed after Burnell's death, as that of Henry VIII changed when Cromwell succeeded Wolsey; but the removal of the minister only sharpens the edge of the king's zeal. His policy, whoever were his advisors, is uniform and progressive. That he was both well acquainted with the machinery of administration, and possessed of constructive ability, is shown by the constitutions which he drew up for Wales and Scotland: both

Still, "on a review of the circumstances of the great struggle which forms the history of England during the thirteenth century," "it is not easy to assign to the several combatants, or the several workers, their due share in the result. The king occupies the first place in the annals; the clergy appear best in the documentary evidence, for they could tell their own tale; the barons take the lead in action; the people are chiefly conspicuous in suffering."—"We can scarcely doubt that Edward had a definite idea of government before his eyes, or that that idea was successful because it approved itself to the genius and grew out of the habits of the people." He "saw, in fact, what the nation was capable of, and adapted his constitutional reforms to that capacity."<sup>155</sup>—Of his design "the period of development is the period of the organic laws from 1275 to 1290."—"Granted that he had in view the strengthening of the royal power, it was the royal power in and through the united nation, not as against it, that he designed to strengthen."—"AND A PEOPLE, TO BE UNITED MUST POSSESS A BALANCED CONSTITUTION, IN WHICH NO CLASS POSSESSES ABSOLUTE AND INDEPENDENT POWER, NONE IS POWERFUL ENOUGH TO OPPRESS WITHOUT REMEDY."—Up to the year 1295, Edward's "laws were directed to the limitation of baronial pretensions, to the definition of ecclesiastical claims, to the remedy of popular wrongs and sufferings. The peculiar line of his reforms, the ever perceptible intention of placing each member of the body politic in direct and immediate relation with the royal power, in justice, in war, and in taxation, seems to reach its fulfilment in the creation of the parliament of 1295, containing clergy and people by symmetrical representation, and a baronage limited and defined in a distinct system of summons." We have now "the result of a governing policy exercised on a growing subject matter. There is no reason to suppose that at the beginning of his reign Edward had conceived the design which he completed in 1295, or that in 1295 he contemplated the results that arose in 1297 and 1301. There was a development coöperating with the unfolding design. The nation, on whom and by whom he was working, had now become a consolidated people, *aroused by the lessons of his father's reign to the intelligent appreciation of their own condition, and attached to their own laws and customs, with a steady though not unreasoning affection, jealous of their privileges, their charters, their local customs, unwilling that the laws of England should be changed.* The reign of Henry III, and the first twenty years of Edward, prove the increasing capacity for self-government, as well as the increased desire and understanding of the idea of self-government;"—"the nation was becoming capable and

bear the impress of his own hand." *Id.*, pp. 294, 295. His legislation "is not the mere registration of unconnected amendments forced on by the improvement of legal knowledge, nor the innovating design of a man who imagines himself to have a genius for law; but

an intelligent development of well ascertained and accepted principles, timed and formed by a policy of general government." *Id.*, p. 295.

<sup>155</sup> 2 Stubbs's Const. Hist., ch. 15, p. 290.



desirous of constitutional action."—Edward "was successful because *he built on the habits and wishes and strength of the nation*, whose habits, wishes and strength he had learned to interpret."<sup>156</sup>

"But the close union of 1295 was followed by the compulsion of 1297: out of the organic completeness of the constitution sprang the power of resistance, and out of the resistance the victory of the principles, which Edward might guide, but which he failed to coerce. With the former date then the period closes, during which the royal design and the national development work in parallel lines or in combination; henceforth the progress, so far as it lies within the compass of the reign, is the resultant of two forces differing in direction."<sup>157</sup>

"It may be fairly granted that the constitution, as it ultimately emerged, may not have been that which Edward would have chosen. Strong in will, self-reliant, confident of his own good will towards his people, he would have no doubt preferred to retain in his own hands and in those of his council the work of legislation, and probably that of political deliberation, while his sense of justice would have left the ordinary voting of taxation to the parliament, as he construed it in 1295 out of the three estates."<sup>158</sup>—"The importance actually retained by the council in all the branches of administration proves that a simple parliamentary constitution would not have recommended itself to Edward's own mind. On the other hand, his policy was far more than one of expediency. It was diverted from its original line, no doubt by unforeseen difficulties. Edward intended to be wholly and fully a king, and he struggled for power. For twenty years he acted in the spirit of a supreme lawgiver, admitting only the council and the baronage to give their advice and consent. Then political troubles arose and financial troubles. The financial exigencies suggested, rather than forced, a new step, and the commons were called to parliament. In calling them, he not only enunciated the great principle of national solidarity, but based the new measure on the most ancient local institutions. He did not choose the occasion, but *he chose the best means of meeting the occasion consonant with the habits of the people*. And when he had taken the step he did not retrace it. He regarded it as a part of a new compact, that faith and honour forbid him to retract. And so on in the rest of his work. He kept his word, and strengthened every part of the new fabric by his own adhesion to its plan, not only from the sense of honour, but because he felt that he had done the best thing. Thus his work was crowned with the success that patience, wisdom and faith amply deserve, and his share in the result is that of the direction of national growth and adaptation of the means and design of government to the consolidation and conscious exercise of national

<sup>156</sup> *Id.*, p. 291 to 293.

<sup>157</sup> *Id.*, p. 293.

<sup>158</sup> *Id.*, p. 295. "Such a constitution might have been more like that adopted by Philip, the Fair, in 1302, than like

that embodied by the statement of parliament in 1322, or enunciated by Edward himself in his answer to the pope." *Id.*, pp. 295, 296.

strength. *He saw what was best for his age and people; he led the way and kept faith.*"<sup>159</sup>

In the reign of Henry III, "the great earl of Leicester"<sup>160</sup> appears in different aspects at different parts of his career, and the great merit of his statesmanship is adaptative rather than originative: what he originates perishes; what he adapts survives. In the earlier period the younger Marshalls lead the opposition to the crown, partly from personal fears and jealousies, but mainly on the principles of Runnymede; they perish, however, before the battle. The earl of Chester, the strongest bulwark of the royal power, is also its sharpest critic, and when his own rights are infringed, its most independent opponent; his policy is not that of the nation, but of the great feudal prince of past times. The earls of Gloucester, father and son, neither of them gifted with genius, try to play a part that genius only could make successful; like Chester, conscious of their feudal pretensions, like the Marshalls, ready to avail themselves of constitutional principle to thwart the king or to overthrow his favourites. In their eyes the constitutional struggle was a party contest: should the English baronage or the foreign courtiers direct the royal councils. There was no politic or patriotic zeal to create in the national parliament a properly-balanced counterpoise to royal power. Hence when the favourites were banished, the Gloucesters took the king's side; when the foreigners returned they were in opposition. They may have credit for an unenlightened but true idea that England was for the English, but on condition that the English should follow their lead.

<sup>159</sup> *Id.*, p. 296. "He appears to great advantage even by the side of the great kings of his own country. Alfonso, the Wise, is a speculator and a dreamer by the side of his practical wisdom; Frederick II, a powerful and enlightened self-seeker, in contrast with Edward's laborious self-constraint for the good of his people. S. Lewis, who alone stands on his level as a patriot prince, falls below him in power and opportunity of greatness. Philip, the Fair, may be as great in constructive power, but he constructs only a fabric of absolutism. The legislation of Alfonso is the work of an innovator, who having laid hold on what seems absolute perfection of law, accepts it without examining how far it is fit for his people, and finds it thrown back on his hands. Frederick legislates for the occasion; in Germany, to balance opposing factions; in Italy, to crush the

liberty of his enemies, or to raise the privileges of his friends; S. Lewis legislates for the love of his people and for the love of justice, but neither he nor his people see the way to reconcile freedom with authority. These contrasts are true, if applied to the Mainzer-recht or the Constitutions of Peter de Vineis, the Establishments of S. Lewis or the Siete Partidas. Not one of these men both saw and did the best thing in the best way; and not one of them founded or consolidated a great power." *Id.*, pp. 296, 297.

<sup>160</sup> Simon de Montfort, earl of Leicester, married Eleanor, sister of Henry III, and of Richard of Cornwall, and widow of William Marshall. 2 Stubbs's Const. Hist., ch. 14, p. 55; 1 Cunningham's Lives of Eminent Englishmen, Glasgow, edi. 1838, pp. 224, 225, 226.

They have the credit of mediating between the English parties, and taking care that neither entirely crushed the other. Further, it would seem absurd to ascribe to the Gloucesters any statesmanlike ability corresponding to their great position. The younger earl, the Gilbert of Edward I's reign, is bold and honest, but erratic and self-confident, interesting, rather personally than politically. To Leicester alone of the barons can any constructive genius be ascribed; and, as we have seen, owing to the difficulty of determining where his uncontrolled action begins and ends, we cannot define his share in the successive schemes which he helped to sustain. That he possessed both constructive power and a true zeal for justice cannot be denied. That with all his popularity he understood the nation, or they him, is much more questionable; and hence his greatest work, the parliament of 1265, wants that direct relation to the national system which the constitution of 1295 possesses. In the aspect of a popular champion, the favourite of the people and the clergy, Simon loses sight of the balance of the constitution; an alien, he is the foe of aliens; owing his real importance to his English earldom, he all but banishes the baronage from his councils. He is the genius, the hero of romance, saved by his good faith and righteous zeal. Bohun and Bigod, the heroes of 1297, are but degenerate sons of mighty fathers; greater in their opportunity than in their patriotism; but their action testifies to a traditional alliance between barons and people, and recalls the resistance made with better reason and in better company by their forefathers to the tyranny of John."—"On the whole, however, it must be granted" as to the baronage, "that while the main-spring of their opposition to Henry and Edward must often be sought in their own class interests, they betray no jealousy of popular liberty, they do not object to share with the commons the advantages that their resistance has gained, they aspire to lead rather than to drive the nation; they see, if they do not fully realize, the unity of the national interest whenever and wherever it is threatened by the crown."<sup>161</sup>

The thirteenth century is the golden age of English churchmanship. The age that produced one Simon among the earls, produced among the bishops Stephen Langton,<sup>162</sup> S. Edmund,<sup>163</sup> Grosseteste,<sup>164</sup> and the Cantilupes.<sup>165</sup> The charter of Runnymede was drawn under Lang-

<sup>161</sup> 2 Stubbs's Const. Hist., ch. 15, p. 297 to 299.

<sup>162</sup> 1 Hume's Engl., N. Y. ed. 1851, pp. 409, 416, 421, 422, 424, 425, 435; 1 Cunningham's Lives of Eminent Englishmen, Glasgow, ed. 1838, pp. 260, 261, 262.

<sup>163</sup> Edmund Rich made primate in 1234, as spoken of in 2 Stubbs's Const. Hist., ch. 14, pp. 49, 51, 57; 3 *Id.*, 305.

<sup>164</sup> Robert Grosseteste, bishop of Lin-

coln, is spoken of in 2 *Id.*, pp. 57, 62, 66, 67, 72, 73; 2 Fuller's Worthies, ed. 1840, pp. 163, 164; and in 1 Cunningham's Lives of Eminent Englishmen, ed. 1838, pp. 262, 263 and 264.

<sup>165</sup> Walter de Cantilupe, bishop of Worcester, and his nephew, Thomas de Cantilupe, bishop of Hereford, are mentioned in Foss's Biogr. Jurid.; and in 2 Stubbs's Const. Hist., pp. 62, 91, 294.

ton's eye; *Grosseteste* was the friend and adviser of the constitutional opposition. *Berksted*, the episcopal member of the electoral triumvirate, was the pupil of *S. Richard*, of Chichester; *S. Edmund*, of Canterbury, was the adviser who compelled the first banishment of the aliens; *S. Thomas*, of Cantilupe, the last canonized Englishman, was the chancellor of the baronial regency. These men are not to be judged by a standard framed on the experience of ages that were then future."—"It was still regarded as an axiom that the priesthood which guided men to eternal life was a higher thing than the royalty which guided the helm of the temporal state; that the two swords were to help each other, and the greatest privilege of the state was to help the church. Religious liberty, as they understood it, consisted largely in clerical immunity. But granting that principle—and until the following century, when the teaching of Ockham and the Minorites, the claims of Boniface VIII, and their practical refutation, the quarrel of Lewis of Bavaria and John XXII, the schism in the papacy, and the teaching of Wycliffe, had opened the eyes of Christendom, that principle was accepted—it is impossible not to see, and ungenerous to refuse to acknowledge, the debt due to men like *Grosseteste*. *Grosseteste*, the most learned, the most acute, the most holy man of his time, the most devoted to his spiritual work, the most trusted teacher and confidant of princes, was at the same time a most faithful servant of the Romish church. If he is to be judged by his letters, his leading principle was the defence of his flock. The forced intrusion of foreign priests, who had no sympathy with the people, and knew neither their ways nor their language, leads him to resist king and pope alike; the depression of the priesthood, whether by the placing of clergymen in secular office, or by the impoverishment of ecclesiastical estates, or by the appointment of unqualified clerks to the care of souls, is the destruction of religion among the laity. Taxes and tallages might be paid to Rome when the pope needed it, but the destruction of the flock by foreign pastors was not to be endured. It may seem strange that the eyes of *Grosseteste* were not opened by the proceedings of Innocent IV to the impossibility of reconciling the Roman claims with his own dearest principles."<sup>166</sup>—"Certainly, as he grew older, his attitude towards the pope became more hostile. But he had seen, during a great part of his career, the papal influence employed on the side of justice in the hands of Innocent III and Honorius III. *Grosseteste's* attitude towards the papacy, however, was not one of unintelligent submission. The words in which he expresses his idea of papal authority bear a singular resemblance to those in which Bracton maintains the idea of royal authority. *The pope could do no wrong, for if wrong were done by him, he was not acting as pope. So the king, as a minister of God, can only do right; if he do wrong, he is acting, not as a king, but as a minister of the*

<sup>166</sup> *Id.*, pp. 299, 300. "Possibly the idea that Frederick II represented one of the heads of the Apocalyptic Beast,

or the belief that he was an infidel plotting against Christendom, influenced his mental perspicacity." *Id.*, p. 300.

*devil*. In each case the verbal quibble contains a verbal negation; and the writer admits, without identifying, a higher principle than authority. But it is not as a merely ecclesiastical politician that he should be regarded. He was the confidential friend of Simon de Montfort and the tutor of his children. He was more than once the spokesman of the constitutional party in parliament, and he was the patron of the friars who at the time represented learning and piety as well as the doctrines of civil independence in the universities and country at large. Bolder and more persevering than S. Edmund, he endured the same trials, but was a less conspicuous object of attack and gained greater success. Grosseteste represents a school of which S. Richard, of Chichester, and his disciple, Berksted, with archbishops Kilwardby<sup>167</sup> and Peckham,<sup>168</sup> were representatives; a school part of whose teaching descended through the Franciscans to Ockham and the Nominalists, and through them to Wyckliffe. The baronial prelate was of another type. *Walter of Cantilupe* no doubt, had his sympathies with the English baronage as well as with the clergy, and was as hostile to the alien favourites of the court as to the alien nominees of Rome. A man like *Thomas of Cantilupe* united in a strong degree the leading principles of both schools; he was a saint-like Edmund, a politician like his uncle and a bishop like Grosseteste. Another class, the ministerial prelate, such as was bishop Raleigh,<sup>169</sup> of Winchester, was forced into opposition to the crown rather by his personal ambitions or personal experiences than by high principle: the intrusion of the foreigner into the court and council was to him not merely the introduction of foreign or lawless procedure, but the exclusion from the rewards that faithful service had merited; and his feeling, as that of Becket had been, was composed, to a large extent, of a sense of injury amounting to vindictiveness. Yet even such men contributed to the cause of freedom, if it were only by the legal skill, the love of system, and ability for organization which they infused into the party to which they adhered. The opposition of the English clergy to the illegal aggressions of the crown in his father's reign taught Edward I a great lesson of policy. He, at all events, contrived to secure the services of the best of the prelates on the side of his government, and chose for his confidential servants men who were fit to be rewarded with high spiritual preferment. The career of *Walter de Merton* proves this; another of his great ministers, bishop *William of March*, was, in popular esteem, a candidate for canonization and a faithful prime minister of the crown. *Walter de Langton*, the minister of his later years, earned the gratitude of the nation by his faithful attempts to keep the prince of Wales in obedience to his father, and to prevent him taking the line which finally destroyed him." Archbishop Winchelsey is

<sup>167</sup> Mentioned in *Id.*, pp. 105, 111, 197.

<sup>168</sup> *Id.*, pp. 112, 114, 197; 3 Fuller's Worthies, edi. 1840, p. 245.

<sup>169</sup> William de Raleigh, bishop of Nor-

wich and Winchester, who died at Tours in 1249, is mentioned in ch. 15, § 24, *ante*, p. 329, as well as in Foss's Biogr. Jurid.

viewed as "an exceptional man, in a position, the exceptional character of which must affect our judgments of both himself and the king. If the necessities of the case excuse the one, they must excuse the other. He also was a man of learning, industry and piety, and if he did not play the part of a patriot as well as Langton had done, it must be remembered that he had Edward, and not John, for an opponent, Boniface and not Innocent for his pope. But on the whole perhaps the feeling of the English clergy in the great struggle should be estimated rather by the behaviour of the mass of the body than by the character of their leaders."<sup>170</sup>

"The action of the people is, to some extent, traceable in the acts of the popular leader. *Simon de Montfort* possessed the confidence of the commons: the knightly body threw itself into the arms of Edward in 1259, when it was necessary to counteract the oligarchic policy of the barons: the Londoners, the men of the Cinque Ports, the citizens of the great towns, the universities, under the guidance of the friars, were consistently on the side of liberty. But history has preserved no great names or programmes of great design proceeding from the third estate. Sir Robert Thwenge, the leader of the anti-Roman league in 1232, and Thomas, son of Thomas, who led the plebeians of London against the magnates, scarcely rise beyond the reputation of local politicians. Brighter names, like that of Richard Sward, the follower of Richard Marshall, are eclipsed by the brilliance of their leaders. It was well that the barons and the bishops should furnish the schemes of reform, and, most fortunate, that barons and bishops were found to furnish such schemes as the people could safely accept. The jealousy of class-privilege was avoided, and personal influences helped to promote a general sympathy. The real share of the commons in the reformed and remodelled constitution is proved by the success of its working, by the growth of the third estate into power and capacity for political action, through the discipline of the parliamentary system; and the growth of the parliamentary system itself is due to the faithful adhesion and the growing intelligence of the third estate."<sup>171</sup>

<sup>170</sup> "The remonstrances of the diocesan and provincial councils are more outspoken than the letters of the bishops, and the faithfulness of the body of the clergy to the principles of freedom is more distinctly conspicuous than that of the episcopal politicians: the growing

life of the universities, which, towards the end of the century, were casting off the rule of the mendicant orders, and influencing every class of the clergy, both regular and secular, tended to the same end." *Id.*, p. 300 to 303.

<sup>171</sup> *Id.*, pp. 303, 304.

## TITLE V.

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### INSTITUTIONS OF ENGLAND FROM 1307 UNTIL 1399.

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CHAP. XVIII.—Institutions in the reign of Edward II—1307 to 1327.

XIX.—Institutions in the reign of Edward III—1327 to 1377.

XX.—Institutions in the reign of Richard II—1377 to 1399.

XXI.—Review of the whole period —1307 to 1399.

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## CHAPTER XVIII.

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### INSTITUTIONS IN THE REIGN OF EDWARD II—1307 TO 1327.

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1. *Commencement of his reign. When and where the Great Seal was delivered him by the chancellor, Baldock. Piers Gaveston received with favour by the King; John de Langton chancellor; Walter Reginald treasurer, in place of Walter de Langton; Adam de Osgodby continued as Master of the Rolls. Also of the Chancellor of the Exchequer and officers of the wardrobe.*

From the day following the death of Edward the first is the computation of the years of his son's reign.<sup>1</sup> Commands of Edward the second to send the Great Seal were received by the chancellor (*Ralph de Baldock*) in London; and the seal was delivered to the king at Carlisle August 2.<sup>2</sup>

<sup>1</sup>He received (in 1307) the homage and fealty of the English magnates at Carlisle (July 20), and of the Scots at

Dumfries. 2 Stubbs's Const. Hist., ch. 16, p. 315.

<sup>2</sup>Foss's Biogr. Jurid.

Piers Gaveston (mentioned in ch. 16, § 24, p. 435) was unwilling to remain in banishment.

"On the death of Edward the 1st, he returned to England, and was received with great favour by King Edward the 2d, who made him" (August 6<sup>3</sup>) "Earl of Cornwall, constituted him his guardian and lieutenant of the kingdom, for the better conservation of the peace and quiet thereof while he should be beyond the seas, or during his pleasure. And he gave him" other powers.<sup>4</sup>

August 22. The king removed *Walter de Langton* from the office of treasurer,<sup>5</sup> and appointed thereto his former tutor, *Walter Reginald*<sup>6</sup> (or Raynald). In the same month *John de Langton* was appointed chancellor.<sup>7</sup>

Like other brethren in the chancery, *Adam de Osgodby*, the keeper of the Rolls, was an ecclesiastic; he held the living of Gargrave in Yorkshire. On November 1, 1307, the king granted to him the office of custos of the House of Converts, in Chancery Lane.<sup>8</sup>

Mr. Foss's statement that *John de Sandale* was called from Scotland and constituted chancellor of the Exchequer, should be taken in connection with what he says as to *John de Benstede*, chancellor of the Exchequer (mentioned in ch. 16, § 25), and *John de Drokens-*

<sup>3</sup> Life of Edw. II, in Harl. Miscel., vol. 1, p. 93; 3 Lingard's Engl., ch. 4, p. 284; 2 Turner's Engl., ch. 3, p. 127, *et seq.*; 1 Mackintosh's Engl., ch. 4, p. 232; 2 Stubbs's Const. Hist., ch. 16, p. 320, note 3; Green's Short Hist., ch. 4, § 5, p. 225; Hist. of Engl. Peop., book 4, ch. 1, pp. 382, 383, of vol. 1.

<sup>4</sup> "Power to grant licenses of choosing pastors of cathedral and conventual churches; to take their fealties when elected and confirmed, and restore the temporalities; to give prebends and vacant benefices, which were of his collection or presentation, and dispose of wardships and marriages which might happen in his absence." 1 State Tr. 21, 22. The King's partiality to Gaveston

occasioned great discontent, and many contests between the King and his barons. *Id.*

<sup>5</sup> 2 Stubbs's Const. Hist., p. 320, note 4.

<sup>6</sup> This son of a baker at Windsor was bred to the church and brought under the notice of Edw. I, by whom he was appointed tutor to the prince, and from whom he received, in 1298, the living of Wimbledon; on the accession of Edw. II, Walter obtained a canonry in St. Paul's. Foss's Biogr. Jurid.

<sup>7</sup> *Id.*

<sup>8</sup> At first it was during pleasure; but by a patent, in 7 Edw. II, it was secured to him for life. In 1377 the office was permanently annexed to that of keeper of the Rolls. Foss's Biogr. Jurid.



*ford*,<sup>9</sup> keeper of the wardrobe—that between them there seems to have been in the first year of this reign, an exchange of offices. Moreover it is stated that *John de Sandale*, “at the end of the year, was one of those directed to instruct the sheriffs of London and Middlesex in arresting the Knights Templars.”<sup>10</sup>

*William de Melton*<sup>11</sup> was, on the accession of Edward II, appointed comptroller of the royal wardrobe, and was afterwards advanced to be keeper of that department.

2. *Of the king in October, 1307, at the parliament of Northampton; and at his father's burial at Westminster. Of the king's marriage to Isabella of France, in January, 1308; and the custody of the Great Seal during his temporary absence. The king's coronation in February; and the Great Council in the spring. The course as to Piers Gaveston.*

In October, 1307, from Northampton, where the three estates had been summoned to meet on the 13th, the king went to Westminster. His father was buried there on the 27th.<sup>12</sup>

To *William de Melton*, Comptroller of the Royal Wardrobe, the Great Seal was delivered Jan. 21, 1308, to be carried abroad with the king. Another seal was given to *John de Langton*, the chancellor, to be used in England during the king's absence.<sup>13</sup>

Edward, accompanied by his mother-in-law, Queen Marguerite,

<sup>9</sup> As an ecclesiastic he was now a canon in the cathedral of Wells, and a chaplain to the pope. He was elected next year bishop of Bath and Wells, and consecrated Nov. 9, 1309. *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Supposed to have been a native of Melton, in Holderness. He was, in 28 Edw. I, parson of the parish of Repham, in Lincolnshire; in the next year ‘our beloved clerk’ was employed to pay the foot soldiers raised in Wales. It is thought probable that he had been employed in the education of the king's son, who, at this time, was about 16 years of age. Foss's Biogr. Jurid.

<sup>12</sup> Stubbs's Const. Hist., ch. 16,

p. 315.

<sup>13</sup> Which after the king's return was, in March, carried to the Exchequer by William de Melton, then bearing the additional title of ‘*Secretarius Regis.*’ (Madox i, 75.) *Id.* How the Seal was dealt with on the king's return, is stated in an entry on the rolls, the words of which are in 1 Campbell's Lives of the Chancellors, ch. 12, in a note on p. 192, of 2d edi. (1846), p. 183, of Boston edi. 1874.

To *William de Byrley* (Birlaco), a clerk in the chancery, with two of his brethren, the Great Seal was entrusted, in 1308, during the chancellor's temporary absence. *Id.*

sailed, January 22, 1308, for France, to marry Isabella, daughter of Philip the Fair. The marriage was in the cathedral of Boulogne, on Jan. 25. The coronation was on Feb. 25. Gaveston, whom the king had made regent during his visit to France, and who at Dover joined the king and queen, was allowed to carry the crown at the coronation.<sup>14</sup> A great council of the magnates, which had been called for March 3, was postponed for five weeks. When it met, on April 28, Gaveston was the chief subject of discussion.

"His banishment was made known in letters patent of the 18th of May; the prelates, earls and barons had counselled it, the king had granted it and promised that he would not frustrate the execution of the order. A month later, having consoled himself in the meantime by increased gifts to Gaveston, and having entreated the interposition of the pope and the king of France in his favour, he made him regent of Ireland. Before the end of the year he was scheming for a recall."<sup>15</sup>

3. *Barons of the Exchequer on Edward's accession; new appointments to Exchequer Bench until March, 1309.*

On Edward's accession, *William de Carleton* was at the head of those reappointed barons of the Exchequer; *Roger de Hegham* was reappointed;<sup>16</sup> *John de Insula*,<sup>17</sup> *Richard de Abyngdon* and *Humfrey de Waledene*<sup>18</sup> were omitted. *Thomas de Cantebrig*<sup>19</sup> (Cambridge) was appointed Sept. 16 (1307). After the appointment in November

<sup>14</sup> 2 Stubbs's Const. Hist., ch. 16, p. 316 to 321; Miss Strickland's Queens of England, vol. 2, p. 123 to 126.

<sup>15</sup> 2 Stubbs's Const. Hist., ch. 14, p. 316 to 322.

<sup>16</sup> He died in Jan. or Feb. 1309. (2 Edw. II.) *Id.*

<sup>17</sup> He was still regularly summoned with the judges to parliament, and in 4 Edw. II, was placed at the head of the justices of assize in the northern counties. *Id.*

<sup>18</sup> "Although he was not one of the barons sworn in on the accession of Edward II," yet he is found among the justices of Oyer and Terminer in 4 Edw.

II, and 8 Edw. II, for Essex and Hertford. "In 13 Edw. II, he had an extensive grant of the stewardship of various royal castles and manors in eleven counties—among which was the park of Windsor—and of the auditorship of their accounts. He is mentioned also as steward to the earl of Hertford, and seems to have been appointed at his desire one of the justices to take an assize in which he was interested." He was restored to the Exchequer Bench June 18, 1324. *Id.*

<sup>19</sup> Of the clerical profession. In 29 Edw. I, he was an officer in the Exchequer. *Id.*

as barons of *John Bankwell*<sup>20</sup> (or Baukwell) on the 10th, and of *John de Everdon*<sup>21</sup> on the 28th,<sup>22</sup> *Richard de Abyngdon* had, in 1307-8, on Jan. 30, a special patent, constituting him a baron '*ita quod in eodem scaccario habuit eundem locum quem habuit tempore domini Edwardi quondam regis Angliæ, patris regis nunc.*'<sup>23</sup> *William de Carleton* on account of his long service, had, on Octo. 24, a special license from the king to retire to his own house as often and as long as his health or private affairs should require, and to attend at the Exchequer in his place when he should think fit.<sup>24</sup> On the same day (Octo. 24) *Thomas de Cantebrig* had a patent authorizing him to take the place of *William de Carleton*, the senior baron, when he was absent, and to sit next to him when he was present.<sup>25</sup> In 1309, on Feb. 28, *John de Foxle*<sup>26</sup> was constituted a baron.<sup>27</sup>

<sup>20</sup> So called from a place (formerly written Bankwell, but now Bankers,) at Lee, in Kent. Besides this, he had other property in the county. He was appointed, in 1297, to perambulate the forests of five counties, and acted next year as a justice itinerant in Kent. It is supposed that he died within a few months after becoming a baron of the Exchequer. *Id.*

<sup>21</sup> An officer of the Exchequer, and, like his fellows, of the clerical profession. In 30 Edw. I, he was appointed to superintend levying the fifteenth in the counties of Oxford and Berks. *Id.*

<sup>22</sup> While a baron he frequently acted as an assessor of taxes in the city of London, and as a justice of Oyer and Terminer in various counties. He was, in 4 Edw. II, dean of the free chapel of St. Peter, in Wolverhampton, and, in 9 Edw. II, lord of that township. He held the chancellorship of Exeter from May, 1308, till August, 1309, and was afterwards a prebendary of Sarum, which he exchanged, in 1323, for the deanery of St. Paul's, London. He continued a baron till 1322 or 1323; died Jan. 15, 1336, and was buried in the church of St. Faith, under St. Paul's. *Id.*

<sup>23</sup> Foss's Biogr. Jurid. A salary of 40 marks was attached to his office. *Id.*

<sup>24</sup> He does not appear among justices summoned to parliament beyond the next March. *Id.*

<sup>25</sup> A clear proof of the royal favour, as there were then two barons in the court senior to him in standing. He remained in this place till July 17, 1310, when his removal doubtless arose from his services being more valuable in another character, as during the time he held the office, and for several years afterwards, extending to 1317, he was employed in foreign negotiations. *Id.*

<sup>26</sup> He had, in 1 Edw. 2, custody of the temporalities of the vacant abbey of Westminster. *Id.*

<sup>27</sup> Besides performing his duties in that court, he was frequently named in commissions, and appointed to take inquests by the parliament, and called upon to act as a justice of assize and of Oyer and Terminer in the provinces as late as 17 Edw. II. He died in 18 Edw. II, possessed of considerable property in the counties of Hants, Berks and Buckingham, part of which was granted to him by the king. *Id.*

4. *Judges of King's Bench and Common Pleas on Edward's accession; additions to or changes upon the bench until November, 1309.*

On his accession Edward II immediately reappointed to the King's Bench *Roger le Brabazon* as chief justice; and *Gilbert de Roubury*, *William de Ormesby*<sup>28</sup> and *Henry Spigurnel*<sup>29</sup> as the other judges.

To the Common Pleas he reappointed as chief justice *Ralph de Hengham*; and as the other judges, *William de Bereford*, *Peter Mallore*,<sup>30</sup> *William Howard*,<sup>31</sup> *Lambert de Trikingham*,<sup>32</sup> and not *Henry de Guldeford*,<sup>33</sup> but *Hervey de Staunton*.<sup>34</sup>

<sup>28</sup> Mr. Foss states that Ormesby was, by a writ dated August 26, summoned to attend the first parliament, and stands in his proper place in the list; and that he was summoned to subsequent parliaments up to 11 Edw. II; but considers that he acted as a justice itinerant during the latter part of his life, and thinks it not unlikely that at the commencement of the new reign he may have been allowed to retire from the heavier duties of the King's Bench to his estates in Norfolk and Suffolk, in which counties he was principally employed as a justice of assize. He died about 1317, and was buried at the abbey of St. Benet's, at Hulme, in Norfolk, to which he was a benefactor. Biogr. Jurid.

<sup>29</sup> In 4 Edw. II, he was one of the king's nuncios to the council, and sent to Rome on a special mission; in 7 Edw. II, he was summoned to undertake, with the bishop of Worcester and three others, an embassy beyond the seas. In the performance of his duties he seems to have been active till 19 Edw. II. Although returned by the sheriff of Bedford in 17 Edw. II, as a knight beyond 60 years of age and unfit for service, he was acting in the next year as a justice itinerant in the islands of Jersey and Guernsey. He last appears as a judge in the parliament of November, 1325

(19 Edw. II), but did not die till three years afterwards. He lived at Kenilworth, and was (according to his return in 1316) lord or joint lord of townships in the counties of Bedford, Buckingham, Oxford and Northampton. He had also property in Essex and Leicestershire. *Id.*

<sup>30</sup> He died about July, 1310. Foss's Biogr. Jurid.

<sup>31</sup> He sat in this court during the whole of the first and part of the second year of the reign, to-wit: until about Nov. 20, 1308. Mr. Foss mentions that by his second marriage was a son, whose descendant in the fifth generation married Margaret, daughter of Thomas Mowbray, duke of Norfolk; and their son, John Howard, was summoned to parliament as Baron Howard by Edw. IV, in 1470, and was created Earl Marshal and Duke of Norfolk by Richard III, in 1485, and is Shakespeare's 'Jockey of Norfolk.' Not only does this dukedom remain in the family, but the earldoms of Suffolk and Berkshire, of Carlisle and of Effingham, and the barony of Howard of Walden, are represented by descendants from the same parentage. *Id.*

<sup>32</sup> Fines levied before him continued till midsummer 1316 (9 Edw. II). *Id.*

<sup>33</sup> He continued to be employed to take assizes and as a justice itinerant. He

In 1308 *William Howard*<sup>35</sup> was succeeded, Nov. 27, by *Henry le Scrope*.<sup>36</sup> In 1309, upon the death of *Ralph de Hengham*,<sup>37</sup> *William de Bereford* was raised (March 15) to the office of chief justice.<sup>38</sup> By commission of Sept. 29, *William de Bourne*<sup>39</sup> (or Burne) was added to this bench. *John de Benstede*<sup>40</sup> was constituted one of its justices October 6.<sup>41</sup>

died in the early part of 6 Edw. II. *Id.*

<sup>34</sup>He performed the duties of this office till Sept. 28, 1314 (8 Edw. II), when he exchanged it for the place of a baron of the Exchequer. *Id.*

<sup>35</sup>"Howard is described as *chief justice* of England on a window in the church of Long Melford, in Suffolk, where he is portrayed in his judge's robes; but as this was not erected till about the reign of Edw. IV, or of Hen. VII, (*Dugd. Orig.*, 44, 99,) and, therefore, nearly two hundred years after his death, it cannot be accepted as authority for a fact, of which no other evidence appears." Foss's *Biogr. Jurid.*

<sup>36</sup>Eldest son and heir of Sir William le Scrope, and Constance, his wife. Distinguished as a knight and a lawyer, he appears as an advocate in the Year Book of 1 Edw. II. Fines were levied before him till Trin., 10 Edw. II; during the same period he acted as a judge of assize and on criminal commissions. Foss's *Biogr. Jurid.*

<sup>37</sup>He was buried in St. Paul's cathedral. In his epitaph he is called '*sos Anglorum*' and '*vir benedictus*.' His two works, '*Hengham Magna*' and '*Hengham Parva*,' have been published with editions of Fortescue de *Laudibus Legum Angliæ*. *Id.* Such editions are mentioned, *post*, in ch. 29, § 3.

<sup>38</sup>The last fine acknowledged before him in that character is dated in 1326, July, in which month he died. *Id.*

<sup>39</sup>He seems to have been frequently engaged in assizes in the country, principally in the western counties. One of

these occasions was, in 10 Edw. II, for the trial of persons accused of conspiring to bring a false appeal of robbery against *John de Treiagu*, with whom (it is curious to find) he was in the same year united in a commission to enquire into transgressions alleged against the taxors in Devonshire. In 12 Edw. II, he was appointed to perambulate the forests of Devon, and was commanded to cause all proceedings before him, as a justice of assize or otherwise, to be brought into the Exchequer, to be estreated; in 14 Edw. II, a commission into Guernsey, Jersey, &c., for the trial of offences which had been directed to him and another, but which had been superseded, was, on the petition of the inhabitants, renewed. *Id.*

<sup>40</sup>Mentioned in ch. 16, § 25, p. 439, and in this ch., § 1, p. 484, as advanced to the post of chancellor of the Exchequer. Mr. Foss states that he resigned it in 1 Edw. II, when he became keeper of the wardrobe (Madox ii, 29); and that, in 2 Edw. II, he was in the Scottish wars, and was sent with Roger Savage to the King of France to arrange a meeting between him and the King of England. *Biogr. Jurid.*

<sup>41</sup>He was, in 8 Edw. II, sent on the king's service to Scotland; in 10 Edw. II, selected as an envoy to Rome on Scottish affairs (which mission was stopped); in 11 Edw. II, one of the commissioners to treat for peace with Robert de Brus; in 12 Edw. II, sent to the papal court with the bishop of Hereford and others to solicit for the

5. *Of persons who, though not justices of the bench, acted in a judicial capacity in the early part of the reign of Edward II.*

In the first two years of this reign *John Randolph* was summoned to parliament among the judges; he was employed in a variety of ways, in a judicial character.<sup>42</sup> Writs summoning *Robert de Retford* to parliament in like manner continue till June, 1318, 11 Edw. II.<sup>43</sup> Others are mentioned as acting in a judicial capacity in the latter part of the reign of Edw. I, and early part of that of Edw. II.<sup>44</sup>

6. *In 1309 of parliament at Westminster, in April; and the statute of Stamford. In 1310, struggle for supremacy; a commission whereby Edward's authority was superseded.*

The first General Assembly of the estates after October, 1307, was April 27, 1309, at Westminster.<sup>45</sup> Then articles were presented which the king was required to answer in the next parliament.<sup>46</sup>

The statute of Stamford, 3 Edw. II (1309), is for enforcing the law on purveyance.<sup>47</sup> After other provisions it concludes thus:

"And as to the other requests which the said good people have made to the King, the King hath granted the same fully, and hath

canonization of Thomas de Cantilupe, chancellor and bishop of Hereford, in the reign of Henry III. Fines were levied before him till 1320. *Id.*

<sup>42</sup> As late as 13 Edw. II. Foss's Biogr. Jurid.

<sup>43</sup> He exercised his functions not only in the home district, but in Durham and in Leicestershire, up to 9 Edw. II. *Id.*

<sup>44</sup> One of these is *William Martin*. In 4 Edw. II, a writ of inquiry was addressed to him; in 9 Edw. II, he was justice of South Wales. He died in 1325. Another is *William de Mortimer*. He continued to act as a justice itinerant, and to be summoned as such to parliament till 9 Edw. II. *Id.*

*Thomas de Fisheburn* acted as a justice of assize until 10 Edw. II. *Id.*

*Geoffrey de Hertelpole* was summoned to the coronation of Edw. II, and held

the office of recorder of London for about a year in 1320; he continued during this reign to act as a justice of assize, attending parliament with his brethren as late as 1326. *Id.*

*William de Colneye* was summoned to the coronation of Edw. II, and to the next two parliaments, his place being low among those of the legal profession. He was returned as member for Norfolk; and was the last of three justices of assize appointed, in 1310, for that and four neighbouring countries. *Id.*

<sup>45</sup> Then parliament passed the statute "of the not taking undue prises from ecclesiastical persons or others." 1 Stat. of the Realm, 153.

<sup>46</sup> 2 Stubbs's Const. Hist., ch. 16, pp. 322, 323.

<sup>47</sup> 2 Stubbs's Const. Hist., ch. 16, p. 325, note 1.

charged his *chancellor* and his other officers that they do cause the same to be firmly kept. And the King willeth that if any one find himself aggrieved in any point contrary to the said ordinance, and the said articles so by him granted, and will complain thereof, that his *chancellor* do give him remedy by writ according to his case and according to that which shall seem most expedient to be done.”<sup>48</sup>

In disregard of adverse sentiment, the king's favorite had returned to England in July, absolved by authority from Rome. On the 27th of that month, the king, at Stamford, met an assembly of the barons, which was regarded as representing the April parliament;<sup>49</sup> discussion of the great grievance was delayed until the following year.

Then “the barons presented themselves in full military array, and Edward found that he must surrender at discretion. His affairs were in much the same state as his grandfather's in the parliament of 1258.”—“The council now assembled proceeded at once to renew the struggle for supremacy which, in the previous century, had for the time been decided by the battle of Evesham. This assembly was strictly a council of the magnates; the bishops, the earls and a large number of barons were summoned, but neither the commons nor the inferior clergy.”

“Edward, willing to consent to anything that might save Gaveston, gave his formal consent, by letters patent of March 16, to the election of a commission by which his own authority was to be superseded until Mich., 1311.”<sup>50</sup> On the 20th of March the barons made their election. Even on this point the proceedings of 1258 served as a precedent. The commons had no share in the matter;<sup>51</sup> the bishops elected two earls, the earls two bishops; these four elected two barons; and the six electors added by coöptation, fifteen others, the whole number being twenty-one.”—“The ordainers took their oath on the 20th of March in the Painted Chamber; foremost among them was Archbishop Winchelsea, who saw himself supported by six of his brethren, of whom” one was *John Langton*, bishop of Chichester, the present chancellor, another was *Ralph Baldock*, bishop

<sup>48</sup> 1 Stat. of the Realm, p. 156.

<sup>49</sup> 2 Stubbs's Const. Hist., ch. 16, p. 325.

<sup>50</sup> 2 Stubbs's Const. Hist., ch. 16, p. 335 to 327. Subsequently when ordinances were passed, they recited that, on the 16th of March, in the 3d year of the reign, the king did, by letters patent, grant to the prelates, earls and barons of the realm, that they might choose certain persons of the pre-

lates, earls and barons; and did also, by the same letters, grant to those who should be chosen “full power to order the state of our household and of our realm.” 1 Stat. of the Realm, 156.

<sup>51</sup> *Id.* (2 Stubbs), p. 327. Referring to Hallam's Middle Ages iii, 42, Mr. Stubbs says, “the details of the election show that Hallam was mistaken in supposing that the commons coöperated.” *Id.* (2 Stubbs), p. 327, note 2.

of London<sup>52</sup> and late chancellor, and another was *John Salmon*, bishop of Norwich,<sup>53</sup> and a future chancellor.

"Gaveston, anticipating misfortune, had left the court in February. Edward, as soon as the council broke up, put himself at the head of his army, and marched against the Scots, leaving the earl of Lincoln as regent."<sup>54</sup>

7. *The treasurer, from May 14, 1308, until July 6, 1310. Chancellorship resigned by John de Langton, May 11, 1310. As to custody of the Great Seal until July 6, 1310. Then Walter de Reginald took the office of the seal and was succeeded as treasurer by John de Sandale.*

Of *Walter Reginald's* predecessor as treasurer (*Walter de Langton*, bishop of Lichfield and Coventry), a view different from that of Lord Coke<sup>55</sup> is taken by Mr. Foss. The latter says:

"He was turned out of his office, cast into prison, and a long list of charges brought against him for malversation, which were directed to be heard before *William de Bereford*, one of the judges. After a long imprisonment at London, Wallingford and York, no proof

<sup>52</sup> He commenced the erection of the chapel of St. Mary in his cathedral, and bequeathed a sum sufficient for its completion. He died at Stepney, July 24, 1313, and was buried in that chapel. Among the works which he left was one entitled '*Historia Anglia, or a History of British Affairs, down to his own time.*' He also made 'a collection of the Statutes and Constitutions of the Church of St. Paul's.' Foss's *Biogr. Jurid.*

<sup>53</sup> Sometimes called John of Ely, having been prior of the convent there. While holding this dignity he was elected bishop of Norwich, July 15, 1299. He visited Rome in 1306; and on the accession of Edw. II, was one of the ambassadors to France to ask for Isabella (daughter of King Philip), as the wife of his sovereign. *Id.*

<sup>54</sup> Sept. 1, 1310. 2 Stubbs's *Const. Hist.*, ch. 16, p. 328. On the death of the earl of Lincoln, in Feb., 1311, the earl of Gloucester was appointed in his

place (March 4, 1311). *Id.*, p. 328, note 3.

<sup>55</sup> Lord Coke states, "that he was judicially convicted in the first year of King Edward the Second;" that "it was before four of the principal judges of the realm, and in effect upon his own confession." Lord Coke, after mentioning 'corrupt and sordid bribery,' says "all these briberies you may read in a bundle of the records remaining in the treasury.' He states that the same is entitled, "*Placita apud Winsor coram Roberto de Brabazon, Will. de Bereford, Rogero de Heigham et Will. Inge justiciariis, &c., assignatis in cro' Sancti Andree apostoli, anno regni regis E. filii regis E. primo.*" Rot. 3, 8, 14., &c. Then using the words, "*Servile est espilationis crimen, sola innocentia libera,*" Lord Coke concludes with the position, that "Histories may safely be believed when there is a record to warrant them." 2 *Inst.*, 573.



could be brought against him, and he was absolved by the court in Octo., 1308. In 1311 he was again imprisoned on a charge of homicide, but again succeeded in confounding his accusers."<sup>56</sup>

*Walter Reginald* having become bishop of Worcester in April, 1308, *John de Sandale* appears to have been *locum tenens* for him as treasurer, May 14, 1308, and afterwards till July 6, 1310.<sup>57</sup>

In 1310, *John de Langton*, bishop of Chichester, resigned the chancellorship May 11.<sup>58</sup> The Great Seal from that day to July 6, was in the wardrobe under the seals of *William de Melton*, comptroller of the wardrobe, and two of the clerks of the chancery.<sup>59</sup> Of *Ingelard de Warlee*,<sup>60</sup> Mr. Foss says:

"Sir T. D. Hardy has introduced him as keeper of the Great Seal on May 11, 1310 (3 Edw. I), because on the resignation of the chancellor on that day, the king delivered it to him to be kept in the wardrobe. He was then keeper of that department, in which, during any vacancy, the seal was ordinarily deposited merely for safe custody. It so remained on this occasion only till the next day, when it was delivered to certain clerks of the chancery, to perform the duties, and afterwards re-deposited there. *Ingelard de Warlee* continued keeper of the wardrobe till the eighth year of that reign."<sup>61</sup>

In 1310, on July 6, *Walter Reginald* (or Raynald,) resigning the

<sup>56</sup> Foss's Biogr. Jurid.

<sup>57</sup> *Id.*

<sup>58</sup> As bishop of Chichester, he presided over his diocese during the remainder of the reign of Edw. II, and for the first ten years of the next reign. He was resolute in the performance of his functions: "of a great spirit;" he "feared not the face of great men in that dangerous time to do that which he ought." He died in 1337, June 17, or July 19. 2 Inst., 53; Foss's Biogr. Jurid.

<sup>59</sup> Foss's Biogr. Jurid. The king's confidence in Melton is apparent, from numerous royal mandates, countersigned '*Nunciante W. de Melton*,' from his being employed on an embassy to France, and from his being raised to the office of keeper of the wardrobe. During this time ecclesiastical honors flowed rapidly

upon him. He was made a canon of York, dean of St. Martin's, London, archdeacon of Barnstaple, provost of Beverley, and was elected archbishop of York, Jan. 21, 1316, but was obliged to wait more than two years for his consecration. Foss's Biogr. Jurid.

<sup>60</sup> Of the clerical profession, and procurator for the archdeacon of Worcester in the parliament of 35 Edw. I. *Id.*

<sup>61</sup> *Id.* *William de Herlaston*, in 6 Edw. II, accompanied the king abroad in the train of *Ingelard de Warlee*, keeper of the wardrobe, and soon afterwards became a clerk in the chancery, and was parson of the church of 'Estwode, near Reylegh;' and in July, 1319, had a grant of the prebend of Carnwyth in the church of Glasgow.' *Id.*

treasurership, *John de Sandale* was placed in this office, and the Great Seal was placed in the hands of *Walter Reginald*.<sup>62</sup> From the terms of the record, of this event, it might be doubtful whether he was invested with the office of chancellor or with that of keeper; but in subsequent records, he is called chancellor.<sup>63</sup>

8. *Six ordinances confirmed by the king in August 1310. The same six, and additional ordinances, enacted by the Parliament of August 1311. Purport of the most important.*

"Six ordinances had been published and confirmed by the king as early as August 2, 1310. By these, provision was made for I, the privileges of the church; II, the maintenance of the peace, and VI, the observance of the charters; III, no gifts were to be made by the king without the consent" (of a certain number) "of the ordainers; IV, the customs which the king was allowed to collect, notwithstanding their questionable legality, were to be collected by native officers, and to be paid into the Exchequer, that the king might live of his own; and V, the foreign merchants who had been employed to receive the customs since the beginning of the reign were to be arrested and compelled to give an account of their receipts."<sup>64</sup>

In 1311, these and other ordinances were reported to a parliament of the three estates at Blackfriars, London, in August. The assembly had been sometime waiting for the king when he came to London about the end of August. The king after "humbly entreaty that his 'brother Piers' might be forgiven, was obliged by the urgent appeal

<sup>62</sup> Stubbs's Const. Hist., ch. 16, p. 328. Mr. Stubbs mentions that these appointments were made without the consent of the ordainers. *Id.*, p. 329, note 1.

<sup>63</sup> (Madox ii, 38, 48.) Mr. Foss says: "Soon after his appointment he lent £1,000 to the king, to the advance of which has been attributed, without sufficient evidence, his attainment of the Seal; but as the loan was made after his elevation, it may more charitably be ascribed to his desire to assist the king in the necessities which then pressed upon him; the ordainers being

in fact at that time in possession of the government and the royal purse: an order, indeed, for the repayment of nearly one-half of it was made so early as May 1, 1311." Biogr. Jurid.

<sup>64</sup> Stubbs's Const. Hist., ch. 16, p. 329. According to the 6th, briefly mentioned above, the great charter was to be kept in such manner, that if there be therein any point obscure or doubtful, it should be declared by the ordainers and others whom they will for that purpose call to them. 1 Stat. of the Realm, 158.

of the council to yield" assent to the ordinances.<sup>65</sup> They were published in the church-yard at St. Paul's, London, on the 5th of October, and were required to be put under the Great Seal and sent into every county of England to be published, holden and firmly kept. They are in 41 chapters,<sup>66</sup> of which the first six are those mentioned in the preceding paragraph. The other chapters embrace the following:

IX. That the king "shall not go out of his realm, nor undertake, against any one, deed of war, without the common assent of his baronage and that in parliament"; and if there be such assent "and it be necessary that he appoint a guardian in his realm, then he shall appoint him with the common assent of his baronage, and that in parliament."

XIII. "Forasmuch as the king hath been evil guided and counselled by bad counsellors, as is aforesaid, we do ordain that all evil counsellors be put away and removed altogether, so that neither they nor other such be near him, nor retained in any office of the king, and other more fit people be put in their places. And in the same manner shall it be done of their servants and people of office, and of others who are in the king's household, who are not fit."

XIV. "And forasmuch as many evils have come to pass by such counsellors and such ministers, we do ordain that the king do make the *Chancellor*, Chief Justice of the one Bench and the other, the treasurer, the chancellor and chief baron of the Exchequer, the steward of his household, the keeper of his wardrobe, and comptroller, and a fit clerk to keep the Privy Seals, a Chief Keeper of the Forests, on this side of Trent, and another on the other side of Trent, and the chief clerk of the king in the Common Bench, by the counsel and assent of his baronage, and that in parliament. And if it happen by any chance that it be expedient to appoint any of the said ministers before there be a parliament, then the king shall appoint thereto by the good counsel which he shall have near him, until the parliament. And so it shall henceforth be of such ministers when need shall be."

XVII. "That the sheriff be from henceforth appointed by the *chancellor*, the treasurer and the others of the council who shall be present; and if the *chancellor* be not present they shall be appointed by the treasurer and barons of the Exchequer, and by the Justices of the Bench, and that such be appointed and made who are fit and sufficient, and who have lands and tenements whereof they can answer to the King and to the People for their deeds; and that no other than such be appointed; and that they have their commission under the Great Seal."

<sup>65</sup> 2 Stubbs's Const. Hist., ch. 16,  
p. 328 to 331.

<sup>66</sup> 1 Stat. of the Realm, p. 157 to 167.

Besides chapters concerning Piers Gaveston<sup>67</sup> and other favourites,<sup>68</sup> there are the following:

XXV. "That from henceforth pleas shall not be holden in the said court of the Exchequer, except pleas touching the King and his ministers, who are answerable in the Exchequer by reason of their offices; and the officers of the same court, and their attendants and servants, who chiefly are abiding with them in the places where the Exchequer abides."

XXXII. "Forasmuch as the law of the land and common right are often delayed, by letters issued under the King's Privy Seal, to the great grievance of the people, we do ordain that from henceforth the law of the land and common right be not delayed nor disturbed by letters of the said seal; and if anything be done in any of the places of the court of our lord the King, or elsewhere, by such letters, issued under the Privy Seal, against right or the law of the land, it shall avail nothing and be holden for none."

XXXVIII. "That the Great Charter of Franchises and the Charter of the Forest, which King Henry, the son of King John, made, be holden in all their points, and that the points which are doubtful in the said Charters of Franchises be explained in the next parliament after this, by the advice of the baronage and of the Justices, and of other sage persons of the law. And this thing shall be done because that we have it not in our power to do the same during our time."

9. *Whether new officers were appointed in or soon after August, 1311, to the chancery and the treasury. Particularly of Adam de Osgodby, master or keeper of the Rolls: and of the keepers of the Great Seal till April, 1314. Also of the barons of the Exchequer; and especially of Walter de Norwich, who was appointed in 1311, in August, a baron of the Exchequer, and in October, locum tenens of the treasury; and in March, 1312, was again made baron, and described as 'nunc capitalis baro.'*

Mr. Stubbs states that in 1311 "new officers were appointed to the chancery and treasury"; and specifies that "on the 11th" of October "Walter of Norwich was made lieutenant of the treasury and Adam of Osgodby became keeper of the Seal Dec. 10."<sup>69</sup>

*Adam de Osgodby*, the master or keeper of the Rolls, has been

<sup>67</sup> Of ch. xx, concerning Piers Gaveston, the substance is in 1 State Tr. 21, 22.

<sup>68</sup> Chapter xxi is concerning Emery Friscombared; ch. xxii, concerning Sir

Henry de Beaumont; and ch. xxiii, concerning Lady de Vesey.

<sup>69</sup> 2 Stubbs's Const. Hist., ch. 16, p. 331, and note 2.

mentioned in ch. 16, § 25, and in this in § 1, p. 484. Mr. Foss, in speaking of *Geoffrey de Welleford*, a clerk of the chancery, says:

"When Walter Reginald, bishop of Worcester, went to the king at Berwick on December 12, 1310 (4 Edw. II) the Great Seal was committed to *Adam de Osgodby*, the keeper of the Rolls, to be kept under the seals of Robert de Bardelby and Geoffrey de Welleford. They retained it till the chancellor's return, a week afterwards."<sup>70</sup>

From 3 to 8 Edw. II the Great Seal was frequently, during absence of the chancellor or vacancy in the office, held by *Adam de Osgodby* under the seals of three clerks.

"At first it was merely in the absence of the chancellor, but between the resignation of *Walter Reginald*, bishop of Worcester, and his appointment as keeper of the seal—viz., between December 9, 1311, and October 6, 1312—*Adam de Osgodby*, *Robert de Bardelby* and *William de Ayremynne* are distinctly described as keepers of the seal (*Rot. Parl.* i, 337) and *transacted all the business connected with it.*" While Reginald continued keeper the Great Seal was always secured by the Seals of these three (*Parl. Writs*, ii, p. 1249).<sup>71</sup>

Although between December 19, 1311, and October 6, 1312, the Seal never appears to have been under controul of *Walter Reginald*, yet on the latter day it was again placed in his hands, only however as custos or keeper; remaining sealed up under the seals of the master of the Rolls and two other clerks in chancery, in whose presence it would seem that all writs were sealed. In this manner the office was executed till April, 1314, when Walter Reginald became archbishop of Canterbury.<sup>72</sup>

In 1310 *John D. Everdon*, *Richard de Abyngdon*, and *John de Foxle* remained barons of the Exchequer on July 17, when *Thomas de Cantebrig* retired from, and *Roger de Scotre*<sup>73</sup> was placed upon

<sup>70</sup> Biogr. Jurid.

<sup>71</sup> *Id.*

<sup>72</sup> He died at Mortlake, Nov. 16, 1327; his remains were interred in Canterbury cathedral. *Id.*

<sup>73</sup> He was possessed of Coringham and other manors in Lincolnshire. In 1309, 3 Edw. II, he and Edmund Passalegh,

designated as serjeants, were appointed to transact the king's business of pleas, and were directed to appear at the Exchequer on Michaelmas day, to do as the king and his council should order. *Foss's Biogr. Jurid.*

this bench.<sup>74</sup> In 1311 *Walter de Gloucester*<sup>75</sup> died before August 29, the date of the first patent raising to this bench *Walter de Norwich*,<sup>76</sup> who on Octo. 23 was appointed *locum tenens* of the treasury of the Exchequer. In 1312 *Roger de Scotre* died before March 3, when *Walter de Norwich* was again made baron.<sup>77</sup>

In 1312 *John Abel*<sup>78</sup> was on March 8, constituted a baron<sup>79</sup> in place of *Walter de Norwich* who is described as '*nunc capitalis baro*,' being the first occasion on which this title is used.<sup>80</sup>

10. *Appointments of Justices of assize in 4 Edw. II; and till 1314.*

Of the three justices of assize appointed in 4 Edw. II, for Kent, Sussex and Surrey, *Robert de Cliderhou*<sup>81</sup> was one, and *William de*

<sup>74</sup> In the same year he was the first named of three justices of assize for six counties, of which Lincoln was one. *Id.*

<sup>75</sup> Mentioned in ch. 16, § 22, p. 424. He acted as one of the king's escheators for the first four years of this reign, and, during its early years, was summoned to parliament among the judges. In 1310, he was one of the three justices of assize for Gloucestershire, and four other counties. In 1311, between June 16 and July 5, he became a baron of the Exchequer; he died in about six weeks, in possession of considerable property in Surrey and the counties of Lincoln, Worcester and Gloucester. *Id.*

<sup>76</sup> Son of Geoffrey de Norwich, and possessed of large estates in Norfolk, Suffolk, Lincoln and Hertford. In the Exchequer he was remembrancer in 35 Edw. I, and he acted in this office in the first years of the reign of Edw. II. *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> In the king's service in 28 Edw. I; two years afterwards seneschal of the queen and custos of her lands. He and his wife were summoned to the coronation of Edw. II, among those selected from Kent county. Foss's Biogr. Jurid.

<sup>79</sup> In the next year he received the office of king's escheator, the duties of which he performed (principally on the south of Trent) for three years. During that time he was employed to fix the tallage on the city of London and on the king's burghs, &c., in the home counties; and was also directed to attend the council, with instructions to be in readiness to proceed on the king's service beyond the seas. When he entered on the functions of escheator he may have resigned his seat in the Exchequer, for he was reappointed a baron May 4, 1315. *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> A clerk in the chancery under Edw. I and Edw. II. He was, during 8 and 9 Edw. II, the king's escheator beyond Trent, and afterwards was parson of the church of Wigan. His part in behalf of the earl of Lancaster was so strong, that he not only sent his son Adam and another man-at-arms with four foot soldiers to his assistance, but preached at Wigan in his favour, and promised absolution to those who aided him. For these offences he was fined £200. He was alive in 7 Edw. III. Foss's Biogr. Jurid.

*Goldington*<sup>82</sup> another. *John de Westcote*, who, like *Goldington*, had been an advocate in the courts, was in the same year (4 Edw. II) not only one of the three justices of assize appointed for Essex and Hertford and the four neighbouring counties, but was also in a commission in Hampshire and Wiltshire.<sup>83</sup> *Milo de Rodborough*<sup>84</sup> was, in 1310, the last named of the three justices of assize appointed for Gloucestershire, Worcestershire and three neighbouring counties.<sup>85</sup> By a mandate to *Adam de Middleton*<sup>86</sup> to attend the parliament in 1313 it appears that he was then a justice of assize.<sup>87</sup> *Robert de Maddingley*<sup>88</sup> was, in 1314, a justice of assize in Norfolk.<sup>89</sup>

11. *In 1312 of the king and Gaveston; the latter illegally beheaded; and the king too weak to bring the offenders to justice. Birth of Prince Edward; the king's visit to France in 1313; John de Droghensford being regent. After the king's return, a new parliament; and pacification.*

In 1312, the king having returned to the north, announced in January that Gaveston had returned to him and was ready to account

<sup>82</sup> Mentioned in the Year Book as an advocate in the early part of the reign of Edw. II. He continued to serve for several years in these and other counties, and was regularly summoned to parliament in virtue of his office till 11 Edw. II. He died in 12 Edw. II. *Id.*

<sup>83</sup> He is not named in any judicial employment later than 8 Edw. II. He died between that date and June, in 13 Edw. II. *Id.*

<sup>84</sup> In 3 Edw. II, he was one of the assessors and collectors in Worcestershire of the twenty-fifth, which was granted by parliament; and he was also on a local judicial commission therein. *Id.*

<sup>85</sup> In May, 1311, a commission was issued into Gloucestershire to four justices to hear complaints against him in a petition from men of that county, charging him with oppression, corruption and

malversation in office. Mr. Foss presumes the result was favourable to him, inasmuch as in the two following years he was responsibly employed, and in the latter was one of three assigned to talliate the cities, &c., in the same five counties. *Id.*

<sup>86</sup> In 5 Edw. II, the custody of the castle of Kingston-upon-Hall, and of the manor of Mitton, was committed to him. Foss's Biogr. Jurid.

<sup>87</sup> In 9 Edw. II, he is certified as holding several lordships in the counties of Notts and York. *Id.*

<sup>88</sup> One of the assessors of the tallage of Cambridgeshire, and three neighbouring counties in 6 Edw. II, and in several judicial commissions in that locality, about the same period. *Id.*

<sup>89</sup> He continued to perform the same functions in these and other counties till 1321, the year in which he died. *Id.*

for his acts; and in February restored his estates. Earl Thomas, of Lancaster, with four confederate earls, took up arms, and after nearly capturing Gaveston at Newcastle, besieged him in Scarborough castle. On the 19th of May he was obliged to capitulate. Under (what was called and should have been *safe*) conduct of the earl of Pembroke, Gaveston was proceeding towards Wallingford, when, without the authority, and against the will of that earl, he was carried off by the earl of Warwick, and on Blacklow Hill, on June 19, in presence of earl Thomas, of Lancaster, was illegally, if not unrighteously, beheaded. Edward was too weak to bring the offenders to justice.<sup>90</sup>

In 1312, on Nov. 13, at Windsor, was born queen Isabella's<sup>91</sup> first child; he became known first as Edward of Windsor, and before his father's death as Edward the third.

In 1313 the king and queen went to France, May 23,<sup>92</sup> leaving *John de Drogheda*<sup>93</sup> (bishop of Bath and Wells) as regent; the king returned on July 16th; on the 26th was called for Sept. 23, a new parliament, during which there is, in October,<sup>94</sup> a grant of pardon and remission by the king, at the queen's instance:<sup>95</sup> there is a statute "that no one be molested for the *death* of Piers de Gaveston";<sup>96</sup> immediately after which is the article "that none be molested for the *return* of Piers de Gaveston";<sup>97</sup> "a statute forbidding bearing of armour," is on the same page.<sup>98</sup> There seems to have been an understanding that the ordinances should hold good.<sup>99</sup>

<sup>90</sup> 2 Turner's Engl., ch. 3, p. 133 to 136; 1 Mackintosh's Engl., p. 233, of Phila. edi. 1830; 2 Stubbs's Const. Hist., ch. 16, pp. 332, 333; Green's Short Hist., ch. 4, § 5, p. 226; Hist. of Engl. Peop., book 4, ch. 1, p. 385, of vol. 1.

<sup>91</sup> In the 18th year of her age, and the fifth of her marriage. Miss Strickland's Queens of England, vol. 2, pp. 130, 131, of Boston edi. 1874.

<sup>92</sup> To the coronation of the king of Navarre. 2 Stubbs's Const. Hist., ch. 16, pp. 333, 334, and notes.

<sup>93</sup> Mentioned in § 1, p. 484. He died

at Dogmersfield in 1329, and was interred in the chapel of St. Catherine in his own cathedral. Foss's Biogr. Jurid.

<sup>94</sup> 2 Stubbs's Const. Hist., ch. 16, p. 333.

<sup>95</sup> Miss Strickland's Queens of England, Phila. edi. 1857, vol. 2, p. 131.

<sup>96</sup> 1 Stat. of the Realm, 169.

<sup>97</sup> *Id.*, p. 170.

<sup>98</sup> And in 1 Stat., Revised edi. 1870, pp. 113, 114.

<sup>99</sup> 2 Stubbs's Const. Hist., ch. 16, p. 337. This parliament sat until Nov. 18. *Id.*, p. 334, note 1.



12. *The treasurership and the custody of the Great Seal from 1312 until 1317; viewed in connection with the state of things after the battle of Bannockburn, in 1314.*

What has been mentioned in § 9, p. 497 (on Mr. Foss's authority) as to the manner in which the office of Reynolds (as to the Great Seal), was executed from Octo. 6, 1312, till April, 1314, should be noticed in connection with the statement of Mr. Stubbs, that "Edward obtained the restoration of Reynolds to the chancery and Sandale to the treasury."

It may be stated, according to Mr. Foss, that *John de Sandale* remained treasurer until March 14, 1312; and consistently with what is stated by Mr. Stubbs as to *Walter de Langton*, bishop of Lichfield and Coventry, that Sandale was succeeded as treasurer by *Walter de Langton*,<sup>100</sup> whose *locum tenens* he was named in the next October. *Sandale* occupied this station till Sept. 26, 1314. Then *Walter de Langton* retired from, and *Walter de Norwich* was raised to, the office of treasurer, and vacated his seat on the bench.<sup>101</sup> Although there may be question whether the day in 1314, on which Walter Reginald ceased to be keeper of the Great Seal, was April 5, or September 26,<sup>102</sup> yet the latter seems to be the day on which *John de Sandale*<sup>103</sup> was appointed chancellor.

<sup>100</sup> Mr. Foss says: "His adherence to the king against the barons was followed by his restoration to his office in March, 1312 (5 Edw. II)." Biogr. Jurid. Mr. Stubbs says: "Walter Langton, the old enemy of Gaveston, had made his peace."—"On the 14th of March he was made treasurer. (Foed. ii, 159). On the 3d of April the ordainers turned him out of the Exchequer, and the archbishop excommunicated him for accepting office contrary to the ordinances; he appealed to Rome in June, 1312 (A Murimuth, p. 18)." 2 Const. Hist., ch. 16, p. 333, and note.

<sup>101</sup> Bishop Langton spent the remainder of his days in the exercise of his episcopal duties. He died Nov. 16, 1321,

and was buried in the chapel of St. Mary, which he had added to his cathedral at Lichfield. Foss's Biogr. Jurid.

<sup>102</sup> 1 Campbell's Lives of the Chancellors, ch. 12, p. 196, of 2d ed. (1846), pp. 187, 188, of Boston ed. 1874; Foss's Biogr. Jurid.

<sup>103</sup> He was an ecclesiastic and one of the king's chaplains. On Jan. 10, 1310, he had been made treasurer of Lichfield; he was a canon of York; it seems doubtful whether he was ever dean of London. During his chancellorship the bishopric of Winchester became vacant, and he was elected to that see in August, 1316. Foss's Biogr. Jurid. Previous to this elevation his London residence as chancellor was in Aldgate. *Id.*

Observing that in 1314 "the battle of Bannockburn, June 24, placed Edward before the people as a defeated and fugitive king,"<sup>104</sup> Mr. Stubbs says:

"Earl Thomas took advantage of the crisis to proclaim that the abeyance of the ordinances was the cause of the public misery; and in a full parliament, held at York in September, 1314, Edward was obliged to consent to the *dismissal* of his chancellor, treasurer and sheriffs. Their places were immediately filled up by nominees of the earl."<sup>105</sup>

Mr. Stubbs adds that "the ordinances were confirmed at the same time." As to the places of chancellor and treasurer, the term *dismissal* may be inaccurate; for on the 26th of September, 1314, some months had elapsed since (in Mr. Foss's view) *Walter Reginald* was in connection with the Seal; and the change of *John de Sandale* was from being the mere *locum tenens* of the treasurer, to the high office of chancellor.

13. *John de Hotham* chancellor of the Exchequer from Dec., 1312, till 1316; *Roger de Northburgh* keeper of the wardrobe in 1316; barons of the Exchequer from 1313 till 1322.

*John de Hotham*<sup>106</sup> was, on December 13, 1312, made chancellor of the Exchequer; in May, 1313 (being canon of York), he was sent on a mission to the court of France.<sup>107</sup> He continued in the chancellor-

<sup>104</sup> 2 Stubbs's Const. Hist., ch. 16, p. 334. "The Scots took baggage to the value of 200,000 pounds, and a great number of noble captains, whose ransoms made them affluent. Bruce distinguished himself for his humanity to the prisoners. He distributed the spoil with magnificent liberality, and by this brilliant success completed the independence of Scotland and the security of his hard-earned throne." 2 Turner's Engl., ch. 3, pp. 143, 144.

<sup>105</sup> 2 Stubbs's Const. Hist., ch. 16, p. 338.

<sup>106</sup> A descendant of John de Trehouse, who, for his assistance to the conqueror, at the battle of Hastings, obtained a

grant of the manor of Hotham, in Yorkshire, with others. He, was, in 27 Edw. I, assessor of the tenth, then granted; and in 2 Edw. II, sent to Ireland as chancellor of the Exchequer. In the next two years he was acting as the king's escheator on both sides of the Trent. In 1311 he was '*custos domorum*' of Peter de Gaveston, in the city of London. Foss's Biogr. Jurid.

<sup>107</sup> "In August, 1314, and again in September, 1315, he went with extraordinary powers to Ireland, then invaded by Edward Bruce, the king of Scotland's brother, to effect a reconciliation with the barons, and to treat with the natives."—"It does not appear that

ship of the Exchequer in Easter, 1316; and probably did not retire from it till his election (July 20) to the bishopric of Ely.<sup>108</sup>

*Roger de Northburgh*<sup>109</sup> was, in April 1316, keeper of the wardrobe.<sup>110</sup>

*John de Insula* (mentioned in § 3, p. 486) resumed his seat in the Exchequer under a patent of Jan. 30, 1313.<sup>111</sup>

*Hervey de Staunton* (mentioned in § 4, p. 488) on Sept. 28, 1314, exchanged his seat in the Common Pleas for that of a baron of the Exchequer.<sup>112</sup>

*John Abel* (mentioned in § 9, p. 498), was reappointed a baron May 4, 1315.<sup>113</sup>

*Ingelard de Warlee* (mentioned in § 7, p. 493) was, on Dec. 29th, 10 Edw. II (1316) appointed a baron of the Exchequer.<sup>114</sup>

In 1317, on May 30, when *Walter de Norwich* was relieved from the treasurership he received the honorable appointment of chief baron.<sup>115</sup>

Mr. Stubbs observes from the middle of this reign "a regular succession of chief barons of the Exchequer."<sup>116</sup>

Though *Richard de Abyndon* was acting as a baron in 9 Edw. II,

while thus employed he was removed from the office of chancellor of the Exchequer." *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> Early in the service of Edw. II, whom he accompanied to Scotland, in 1314, as keeper of the royal signet (*custos targie*); taken prisoner with that in his possession at the bloody battle of Bannockburn. Foss's Biogr. Jurid.

<sup>110</sup> In 1317, presented by the king with the archdeaconry of Richmond; in 1320, on a mission to Carlisle, to treat for a truce with the Scots. *Id.*

<sup>111</sup> And is frequently noticed in that character till 12 Edw. II. He died in May or June, 1320. Foss's Biogr. Jurid.

<sup>112</sup> *Id.*

<sup>113</sup> He was probably removed in 14 Edw. II, as he was not summoned to

parliament beyond that year, and a new baron was then nominated. He died in 16 Edw. II, possessed of large estates at Footscray and Lewisham, in Kent, at Rochford, in Essex, and at Camberwell, in Surrey, besides the manor of Dadynton, in Oxfordshire, about which there was afterwards a suit in parliament between his three daughters by his wife, Margery, and their husbands, and the Earl of Norfolk, who claimed it by a subsequent grant from Edw. III. *Id.*

<sup>114</sup> And so continued till his death in June, 1318. In the wardrobe accounts, it is entered that "two pieces of Lucca cloth" were laid upon his body, buried in the church of St. Martin's-le-Grand. *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> 2 Const. Hist., ch. 15, p. 267.

yet in that year was the subjoined complaint;<sup>117</sup> the failure of his powers is stated in a patent of June 18, 1317 (10 Edw. II),<sup>118</sup> whereby *John de Okham*<sup>119</sup> was appointed his successor.<sup>120</sup> Afterwards were appointed as barons of the Exchequer, 1318, July 24, *Robert de Wodehouse*;<sup>121</sup> 1320, August 6, *Walter de Friskeneay*,<sup>122</sup> and *Lambert de Trikingham*;<sup>123</sup> 1322, July 20, *Roger Beler*.<sup>124</sup>

<sup>117</sup> Against William Randolf "for insulting and imprisoning him" (Richard de Abyndon), "and three others, justices, who were assigned to hear and determine certain matters in the city of Bristol." (Rot. Parl. i, 130.) Foss's Biogr. Jurid.

<sup>118</sup> Wherein his infirmity is thus described: "*quia dilectus clericus noster Ricardus de Abyndon, unus baronum nostrorum de Scaccario, adeo impotens sui existit, quod ea quæ ad officium illud pertinent non potest commodè exercere.*" *Id.*

<sup>119</sup> He was joined in commission with the escheator, *ultra Trentam*, to take into the king's hands the property of Anthony, patriarch of Jerusalem and bishop of Durham, on his death in 4 Edw. II. During the four following years he was clerk to Ingelard de Warlee, keeper of the wardrobe, and held the office of cofferer of that department. *Id.*

<sup>120</sup> He is not named in this character beyond 1322. He became custos of the deanery of the free chapel of St. Martin, London, in 19 Edw. III. *Id.*

<sup>121</sup> Chaplain to Edw. III, from whom he received the office of escheator. He was summoned to parliament among the judges as late as Nov., 1322, 16 Edw. II, when he probably resigned, or was removed, as about this time he became keeper of the wardrobe, an office which he held at the end of this reign and at the commencement of the next. Foss's Biogr. Jurid.

<sup>122</sup> His name was derived from a parish,

so called, in Lincoln county. As counsel, he is mentioned in the Year Book of Edw. II. He was, in 4 Edw. II, summoned with six others as an assistant to parliament; and was in 7, 8, and 11 Edw. II, added to several judicial commissions in his own county. *Id.*

Besides being frequently employed as a justice in the county, he was one of those to pronounce judgment upon the Mortimers in 16 Edw. II. On the 9th of July, 1323, he was removed from this court to the Common Pleas. *Id.*

<sup>123</sup> It is supposed that he left the bench about 17 Edw. II. He still, however, was employed as a justice itinerant. In 1317 he received the mastership of Sherbourn hospital, in Durham. *Id.*

<sup>124</sup> Of a family at Kirkby, on the Wrethek, in Leicestershire, in which, and in the neighbouring counties, they held large possessions. Roger was son of William Beler, and Avicia, his wife, and grandson of another Roger Beler, who was sheriff of Lincolnshire in 40 Hen. III. In 12 Edw. III, the king granted him the hundred of Framelond, and certain farms in Leicestershire, for laudable services. In the same year he received a general pardon as an adherent of Thomas, earl of Lancaster, and was confirmed in his office of bailiff and steward of Stapelford, in Leicestershire. He was occasionally employed in judicial commissions before he was raised to the Exchequer bench.

"He came to a violent end, being attacked and murdered on Jan. 29, 1326 (on his journey from Kirkby to Leices-

14. *Appointments of judges of the Common Pleas from 1313 till 1321.*

*John Bacon*<sup>125</sup> was advanced to the bench of the Common Pleas Feb. 19, 6 Edw. II (1313).<sup>126</sup>

In 1314, on Sept. 28 (8 Edw. II), *Hervey de Staunton* (mentioned in § 4, p. 488) ceased to be, and William Inge<sup>127</sup> became, a judge of this court;<sup>128</sup> he only held the office till Feb., 1316.<sup>129</sup>

*Gilbert de Roubury* was changed from the King's Bench to this court March 10, 1316.<sup>130</sup>

In 1316, on April 20 (9 Edw. II), *John de Mutford*<sup>131</sup> was by

ter), by Sir Eustace de Folville, lord of the neighboring manor of Ashby, who was himself mortally wounded with an arrow. A commission was issued to try the offenders, and the goods of Roger la Zousch, lord of Lubesthorp, and Robert de Heleweli, charged as accessories, and, flying from justice, were, thereupon, ordered to be seized into the king's hands. Sir Roger was buried in the chantry chapel he had erected at Kirby, where his tomb, with a fine alabaster effigies of him, in complete armour, still remains." *Id.*

<sup>125</sup> Before his advancement to the bench, he had almost always the title of Clericus Regis. He held the office of 'custos rotulorum et brevium de banco' from, if not before, 1288, 16 Edw. I. The custody of Leeds castle, in Kent, was committed to him in 19 Edw. I; and, two years before, he is mentioned as one of the executors of Queen Eleanor, the record calling him 'attorney.' Among the advocates he appears in the Year Book in the earlier years of Edw. II. Foss's Biogr. Jurid.

<sup>126</sup> He continued a judge there till Octo. 16, 1320. *Id.*

<sup>127</sup> Until this elevation he appears among the advocates recorded in the Year Book, showing, that notwithstanding his employment as a justice of

assize, he did not cease to practice at Westminster. *Id.*

<sup>128</sup> In January, 1315, while merely a justice of the Common Pleas, he, by the king's directions, opened the parliament at Lincoln. *Id.*

<sup>129</sup> When he became chief justice of the King's Bench. *Id.*

<sup>130</sup> He retired from the court, or died before May 31, 1321. *Id.*

<sup>131</sup> Of a knightly family, settled in the parish of that name in Suffolk. In the profession of the law, he conducted the king's causes in 22 and 30 Edw. I. In 35 Edw. I, there is on the Rolls of parliament (i, 197) an order that *John de Mutford* be called before the treasurer and barons of the Exchequer, to inform them of the king's right in the matter of a petition then presented, which seems to show that his duties were very similar to these performed at a later period by one in the office of attorney-general. In that same year (the last of Edw. I) he was a justice of trailbaston to act in Cornwall and nine other counties. From the commencement of the reign of Edw. II, he is found acting as a justice itinerant, and among the judges attending parliament. He was, in 5 Edward II, sent to Ireland as one of the commissioners to quiet discontents and disturbances there; two years afterwards

patent, constituted a judge of the Common Pleas; he continued in this office during the remainder of the reign.<sup>132</sup>

On August 6 (9 Edw. II) *Lambert de Trikingham* was removed from this court.<sup>133</sup>

In 1319, on June 5, *John de Doncastor*<sup>134</sup> was raised to this bench.<sup>135</sup>

In 1320 on Octo. 16, in place of *John de Benstede*<sup>136</sup> (mentioned last in § 4, p. 489) *William de Herle*<sup>137</sup> was appointed; and in place of *John Bacon* (mentioned in § 14, p. 505) *John de Stonore*<sup>138</sup> was appointed a justice of this bench.

*Gilbert de Roubury* retired from the court or died before May 30,

he was summoned to appear before the council ready to proceed on the king's service beyond the seas. Foss's Biogr. Jurid.

<sup>132</sup> *Id.*

<sup>133</sup> To the King's Bench. *Id.*

<sup>134</sup> In 28 Edw. I, a commissioner of acray in Yorkshire. He was summoned to the coronation of Edw. II, and from that year included in the list of judges and others called to assist at the parliaments. He was, in 1310, a judge of assize for the northern counties; during the next seven years he is named in various judicial commissions. Foss's Biogr. Jurid.

<sup>135</sup> The fines levied before him do not extend beyond the next year, and he was not summoned to parliament after the early part of 14 Edw. II. Mr. Foss supposes that "he was probably at that time removed from the court, although he was named in a special commission for trying some forest offences in his own county two years afterwards." He was alive in 5 Edw. III. *Id.*

<sup>136</sup> In 15 Edw. II, he was returned by the sheriff of Hertford as knight banneret. He had large possessions, with a manor house called Rosemont, at Eye, near Westminster, which he had license to fortify with walls of lime and stone. His death did not occur till 1323 or 1324.

His descendants were living in Essex county till the reign of Henry VII. *Id.*

<sup>137</sup> Probably born in Leicestershire, "both Robert de Herle, apparently his father, and he having been summoned by the sheriff of that county, the former in 1301 (29 Edw. I) to perform military service, and the latter in 1324 (17 Edw. II), to attend the great council at Westminster." The principal part of his property was in that county. He was, in 4 and 6 Edw. II, summoned as an assistant to parliament, apparently in the character of a serjeant at law; and in 9 Edw. II, one of three '*qui sequuntur pro rege*' in a suit against the men of Bristol; the wardrobe account of 14 Edw. II contains the entry of a payment (Aug. 6) of £133 6s. 8d. to him as "king's serjeant, who, by the king's order, will shortly receive the honour of knighthood of the king's gift, in aid of his rank." *Id.*

<sup>138</sup> It seems uncertain which of two counties (Kent and Oxfordshire) was the place of his birth. In the Year Books he is frequently mentioned as an advocate; in 6 Edw. II he was so far advanced among the serjeants as to be summoned to assist at the parliament; in 9 Edw. II he had a grant of £20 *per annum* for his expenses in prosecuting and defending suits for the king; he was, on several occasions, employed on

1321, when *John de Bourchier*<sup>130</sup> (or Bousser) was constituted one of its judges.<sup>140</sup>

15. *In 1315 the Spire of St. Paul's taken down and replaced. Generally as to the state of things in England in 1315 and 1316. How the King's authority was superseded. Proceedings of the King, the council and the parliament.*

Old St. Paul's is mentioned in ch. 15, § 21, p. 323. It "was one of the largest edifices in the world, and in its best days, before it was deformed by the successive repairs to which it was subjected, and the various foreign incumbrances under which it was long buried, it was no doubt a grand and imposing structure. But its form in the course of time, underwent so many changes that at last it presented the appearance of little else than a heap of incongruity and confusion. The spire was of timber," which in 1315 "was found to be so much decayed that the upper part of it had to be taken down and replaced."<sup>141</sup>

In a parliament which sat from Jan. 20 to March 9, 1315, there were grants on terms and conditions: *Hugh le Despenser*<sup>142</sup> and *Walter*

special judicial commissions; his proceedings thereunder he was commanded in 12 and 13 Edward II to carry into the Exchequer to be estreated. *Id.*

<sup>139</sup> This son of Robert de Bousser and Emma, his wife, was an attorney of the earl of Oxford, to appear in his place in parliament in May, 34 Edw. I (1306). He was, in 8 Edw. II, a justice of assize in the counties of Kent, Surrey and Sussex; and is in other judicial commissions thenceforth till May 31, 1321. Foss's Biogr. Jurid.

<sup>140</sup> He continued in this court for the remainder of the reign; and in 19 Edw. II was the head of a curious commission to hear and determine a charge made by the Bishop and Dean and Chapter of London against certain persons for taking and carrying away a great fish '*qui dicitur cete*', found on their manor of Walton; the prosecutors alleging that King Henry III had, by his charter, granted them '*totum crassum piscem*,' which should be taken on their land, 'except the tongue,

which the said king retained to himself.' *Id.*

<sup>141</sup> "It was upon this occasion that a ball, surmounted by a cross, was first fixed upon the termination of the spire." Penny Magazine for 1832, May 12, p. 57.

<sup>142</sup> Mr. Stubbs says: "The ablest man who was faithful to the king was probably *Hugh le Despenser*, the elder."—He "was the son of the great justiciar who had fallen with *Simon de Montfort* at Evesham, and step-son of Roger Bigod, who had compelled Edward I to confirm the charters. He had been in constant employment under Edward I; as his envoy he had obtained from Clement V the bull of absolution which relieved the king from his oath in 1305; and under Edward II he had" "incurred the hatred of the magnates as supporting Gaveston. As early as 1308 or 1309 the king had been requested to remove him from the council, but notwithstanding the hostility of the lords, his experience made him too valuable to

*Langton* were removed from the council: regulations were drawn up for the royal household: the king was put on an allowance of ten pounds a day. Edward bent to the storm and yielded where he could not resist.<sup>143</sup>

"There were two parliaments holden in" 9 Edw. II, "viz., the one at Lincoln, 15 Hill.," "and the other 15 Pasch.," "at Westminster."<sup>144</sup> Lord Coke writes of that parliament at Lincoln,

"Where Walter Reynolds, bishop of Canterbury, whom the king favoured, saith one, singularly for the opinion he had of his fidelity and great wisdom, and *Walterus archiepiscopus Cantuariensis regi gratiosissimus fuit, hæc regis æquissima responsa ad prælatorum petita obtinuit* in the name of himself and of the clergy, preferred" "16 articles, and by the authority of the parliament had the answers."<sup>145</sup>

The tenors of said articles with the answers are the '*Articuli cleri*,' or 'Articles for the clergy.'<sup>146</sup> After which is '*Statutum Lincoln de Vicecomitibus*,' or 'The statute of sheriffs,'<sup>147</sup> and 'The statute of inviolably observing the statute for the clergy.'<sup>148</sup> Of the parliament which met at Lincoln in January, 1316, Mr. Stubbs says:

"There Earl Thomas took another step, which wrested the reins altogether from Edward's hands."<sup>149</sup> He was made president of the

be neglected. He rose in favour, he was god-father to the king's eldest son, and his rise was shared by his son *Hugh le Despenser*, the younger, whom in 1313 Edward married to the eldest of the co-heiresses of Gloucester." 2 Const. Hist., ch. 16, p. 336.

<sup>143</sup> *Id.*, pp. 338, 339.

<sup>144</sup> 2 Inst., pp. 618, 619.

<sup>145</sup> *Id.*, p. 601.

<sup>146</sup> In *Id.*, p. 618 to 638; 1 Stat. of the Realm, p. 171 to 174; 1 Statutes Revised, edi. 1870, p. 114 to 119.

<sup>147</sup> 1 Stat. of the Realm, pp. 175, 176. "That the sheriffs from henceforth shall be assigned by the *Chancellor*, Treasurer, barons of the exchequer and by the justices, and in the absence of the chancellor, by the treasurer, barons and

justices; and that none shall be sheriff except he have sufficient land within the same shire where he shall be sheriff, to answer the king and his people." 1 Stat. of the Realm, pp. 175, 176; 1 'Statutes Revised' edi. 1870, p. 119 to 121. This statute (which is on the same subject with chapter XVII of ordinances, in § 8, p. 495), provides also as to the keeping of hundreds.

<sup>148</sup> 1 Stat. of the Realm, pp. 175, 176.

<sup>149</sup> The parliament was summoned Oct. 16, for Jan. 27; it sat until Feb. 20. Lancaster was not present until Feb. 12; on the 17th the bishop of Norwich, at the king's request, proposed that the earl should become '*de consilio regis capitalis*'; '*principalis conciliarius regis efficitur*' (M. Malmesb., p. 166); '*ordi-*



royal council on the express understanding that without the consent of the council, no acts touching the kingdom should be done, and that any member of it who should do any act or give any advice dangerous to the kingdom should be removed at the next parliament. The king accepted the ordinances."<sup>150</sup>—"The arrangements thus begun were completed in a July session of the knights, also held at Lincoln."<sup>151</sup>

16. In 1316 Roger le Brabazon resigned, and William Inge was elevated to the office of Chief Justice of the King's Bench. Changes on this bench till 1320.

Roger le Brabazon performed the functions of chief justice of the King's Bench till Feb. 23, 1316 (9 Edw. II), when, pressed by age and infirmities, he applied for and obtained his discharge.<sup>152</sup>

William Inge, who had been in the Common Pleas, was in the latter part of the same month (Feb. 1316) made chief justice of the King's Bench.

Soon Gilbert de Roubury went (March 10, 1316) from this bench into the Common Pleas; and Lambert de Trikingham went (August 6, 1316) from that court upon the King's Bench.<sup>153</sup>

1317, June 15, William Inge was displaced from the office of chief justice<sup>154</sup> by Henry le Scrope.<sup>155</sup>

1320, about August, Robert de Malberthorp<sup>156</sup> was raised to this bench.

*natum erat quod dominus rex sine consilio comitum et procerum nihil grave, nihil arduum inchoaret, et comitem Lancastrie de consilio suo principaliter retineret.* (*Ibid.*, p. 172.) = Stubbs's Const. Hist., ch. 16, p. 339, note 3.

<sup>150</sup> *Id.*, p. 339. The order for enforcement was given March 6. (*Foed.* ii, 287.) *Id.*, note 4.

<sup>151</sup> *Id.*, pp. 339, 340. The knights were summoned June 25, to meet July 29, before the king's council. The session lasted till August 5. *Id.*, p. 340, note 1.

<sup>152</sup> The patent of Feb. 23, 1316, "records the king's commands, that he should be retained '*de secreto concilio*' during his life, and should be admitted to all the king's courts, councils and

parliaments, as often as he might choose to be present. He died in the following year." Foss's Biogr. Jurid.

<sup>153</sup> Where he remained exactly four years, being made a baron of the Exchequer Aug. 6, 1320. Foss's Biogr. Jurid.

<sup>154</sup> He died in 1321, leaving large possessions in ten counties. *Id.*

<sup>155</sup> Mentioned in § 4, p. 489.

<sup>156</sup> So called from a manor of that name in Lincolnshire. He is mentioned in connection with property in that county in 6 and 8 Edw. II; he was occasionally employed in commissions there, from 10 Edw. II, till he was raised to the bench. Foss's Biogr. Jurid.

17. In 1316, Adam de Osgodby died and was succeeded by William de Ayremynne as Master of the Rolls. Of the treasurer, chancellor of the Exchequer and Lord chancellor of England from 1316 to 1319. John de Sandale was succeeded in the latter office by John de Hotham. The masters, as his standing counsel, assisted him in 12 Edw. II, in the case of the Abbot of St. James. Upon Hotham's resignation in Jan. 1320, John Salmon became chancellor.

Adam de Osgodby (mentioned in § 9, p. 496) was uninterruptedly in the office of keeper of the Rolls of Chancery from 23 Ed. I (1295) till 10 Edw. II (1316) a period of nearly 21 years. In both reigns, he frequently, in the chancellor's absence, performed the functions of chancellor, sometimes alone, and sometimes in connection with two or three of the other clerks. He died in August 1316.<sup>157</sup>

William de Ayremynne<sup>158</sup> was on the 19th August, 1316, raised to the office of keeper or master of the Rolls. In this character, the Great Seal was frequently placed in his custody, under the seals of three clerks, to perform the duties of the chancery, when the chancellors, John de Sandale, John de Hotham and John Salmon were absent from court. Having about 1319, joined the Archbishop of York, the Bishop of Ely and others in an army against the Scots; he was taken prisoner in the encounter to which (from the number of priests and monks in the English ranks) the name of the white battle was given, and probably remained in durance until the truce.<sup>159</sup>

<sup>157</sup> Foss's Biogr. Jurid.

<sup>158</sup> After giving his pedigree, and mentioning him as one of the clerks in chancery in 5 Edw. I, Mr. Foss speaks of the period from Aug. 27 to Sept. 28, 1311, when during the absence of Bishop Reginald, the chancellor, the Great Seal was in the hands of the keeper of the Rolls, under the seals of him (*William de Ayremynne*) and Robert de Bardelby; and citing *Palgrave's Merchant and Friar* 70 says: "When sent by the chancellor to summon to parliament the Abbot of Oseney, who had used every evasion to avoid obeying the writs, he cunningly gained access to the abbot in

the disguise of a penitent; but as soon as his errand was disclosed, he received such a salutary discipline from the knotted scourges provided by the monks for the benefit of the visitors to the shrine of St. Brithwold, as induced him to decamp most speedily, adopting with entire sincerity the character which he had assumed." It is further stated that he was one of three keepers of the Seal, appointed Dec. 9, 1311, who held it till Sept., 1314, and that he was clerk of the parliament which met at Lincoln in Jan., 1316. Biogr. Jurid.

<sup>159</sup> Foss's Biogr. Jurid.

*Hervey de Staunton* became chancellor of the Exchequer June 22, 1316.<sup>160</sup> *Walter de Norwich* retained the treasurership till May 30, 1317.<sup>161</sup> *John de Hotham*, bishop of Ely, (mentioned in § 13, p. 502) was raised to the treasurership in 1317, and held this office till June 1318. *John de Sandale* (bishop of Winchester) and chancellor of England was present in the parliament at London in January 1315, and there superintended judicial business;<sup>162</sup> he held the chancellorship till June 9, 1318, and was restored (Nov. 16, 1318) to the treasurership; this he held until his death Nov. 2, 1319.<sup>163</sup>

About June 10, 1318, the Great Seal was delivered to John de Hotham (bishop of Ely) as chancellor. He was frequently in journeys on the king's affairs; and for the first six or seven weeks of his chancellorship, its duties may have been performed by others.<sup>164</sup> In 12 Edw. II, he had the masters as his standing counsel to advise and assist him.

"The Abbot of St. James *extra* Northampton, being enrolled *de novo* in the King's chancery to come to Parliament, he petitioned to be discharged, because he did not hold either *per baroniam*, or *de rege in capite* but in frankalmoign, and neither he nor his predecessors were ever before enrolled in chancery or ever came to Parliament, whereas the Abbot prayed to be relieved; in execution of which petition or bill, *Dominus Cancellarius cum suo concilio de Cancellar' ordinavit*, (the Lord Chancellor ordained with *his counsel of the chancery*) that the name of the Abbot should be taken out of the registry of the chancellor. This excuse or allowance was made by the view of *John Hotham*, Chancellor, *William de Armines*, keeper

<sup>160</sup> But seems to have been still employed in a judicial character on various commissions, and to have been regularly summoned to parliament with the other judges. Foss's Biogr. Jurid.

<sup>161</sup> According to Mr. Foss, he then was relieved from the office on account of illness; received the appointment of chief baron, and was commanded to assist at the privy councils of his sovereign whenever he was able. Mr. Foss adds: "He is called by this title, in 13 Edw. II, as present in the delivery of the Great Seal." *Id.*

<sup>162</sup> I Campbell's Lives of the Chancellors, p. 197, of 2d edi. (1846), p. 189, of

Boston edi., 1874.

<sup>163</sup> At Southwark. He was buried there in St. Margaret's church. He had received from Edward I the manor of Berghby in Lincolnshire, and, from Edw. II, a house in the suburbs of Lincoln, belonging to a religious society then dissolved. It is probable, therefore, that his family was settled in that county, although, from its name, it is supposed to have had its origin in Yorkshire, in which, at his death, he had property in the manor of Whetlay, near Doncaster. *Id.*

<sup>164</sup> Foss's Biogr. Jurid.

of the Rolls, *Robert Bardelby* and other clerks of the chancery."<sup>165</sup>

*John de Hotham* held the office of chancellor for about nineteen months.<sup>166</sup> After his resignation, Jan. 23, 1320,<sup>167</sup> *John Salmon*<sup>168</sup> was appointed chancellor in full parliament.

18. *State of things in 1318, after the capture of Berwick; what was done in the parliament of that year at York: of the statute called the 'statute of York'; and of other statutes.*

In 1318, after the capture of Berwick (April 2), there was at Leek, a treaty or arrangement whereby "a general pardon was granted to the earl" (of Lancaster) "and nearly 700 followers," and whereby also "the ordinances were confirmed and a new council nominated,"<sup>169</sup> of whom "two bishops, one earl, one baron and the banneret were to be in constant attendance, and with their concurrence every thing that could be done without the assent of parliament, was to be done."

"The treaty was arranged on the 9th of August, and reported to a full parliament held at York on the 18th of October.<sup>170</sup> This, which was the first parliament since that of Lincoln, in 1316, confirmed the treaty and the pardons, and passed a statute to improve the judicial procedure."

<sup>165</sup> Legal Judic. in Ch., ed. 1727, ch. 3, pp. 67, 68.

<sup>166</sup> During the latter part of which period he was engaged in negotiating a truce with the Scots. Foss's Biogr. Jurid.

<sup>167</sup> He was still employed by the king on confidential missions. *Id.*

<sup>168</sup> Son of Salamon and Amicia, for whose souls he appointed four priests to pray in a chapel he founded in the chancel of Norwich cathedral. He is sometimes called John of Ely, having been prior of the convent there. He was elected bishop of Norwich July 15, 1299, and visited Rome in 1306. Soon after the accession of Edward II, he was one of the ambassadors to France to ask for Isabella (daughter of King Philip) as Edward's wife. He was, in 3 Edw. II,

one of the ordainers, and, in 9 Edw. II of the commissioners to open parliament. He took the king's part throughout his reign. *Id.*

<sup>169</sup> "To consist of eight bishops: Norwich, Ely, Chichester, Salisbury, S. David's, Hereford, Worcester and Carlisle; four earls: Pembroke, Arundel, Richmond and Hereford; four barons: Hugh Courtenay, Roger Mortimer, John Segrave and John Gray; and a single banneret, to be named by the earl of Lancaster." 2 Stubbs's Const. Hist., ch. 16, pp. 342, 343.

<sup>170</sup> *Id.* The parliament sat until Dec. 9. *Id.*, p. 343, note 1. Hugh le Despenser, the younger, was appointed chamberlain. *Id.*, p. 343, notes 2, 3, and p. 345.

It is known as the 'Statute of York.'<sup>171</sup> Of this statute, after the chapters below,<sup>172</sup> is one (ch. VI) enacting as to an officer 'to keep assizes of wines and victuals,' that he "shall not merchandize for wines nor victuals"; and prescribing a forfeiture; and providing that "the *chancellor*, treasurer, barons of the exchequer, justices of either bench, and justices assigned to take assizes, shall admit such complaints by writs and without writs, and shall determine them."<sup>173</sup>

*19. Of the parliaments of 1319, 1320 and 1321; sentence in parliament of July, 1321, against the Despensers.*

In 1319, a parliament called to meet May 6th, sat at York till the 25th. Edward was obliged to retire from the siege of Berwick and to conclude a truce for two years.<sup>174</sup>

During this truce he, leaving Pembroke regent, in 1320 sailed for France June 19, and returned July 22.<sup>175</sup> Gaveston's fate not having taught Edward wisdom, Gaveston's place in his regard had now been taken by Hugh Despenser, the younger. Though Hugh and his father were neither foreigners nor upstarts, yet they were subject to charges as fatal as those which had overwhelmed Gaveston. Troubles, which may have begun in the parliament that passed the statute of Westminster the fourth (touching sheriffs and juries),<sup>176</sup> were conspicuous in the next year.

A full parliament was called May 15 to meet at Westminster July 15th.<sup>177</sup> Charges against the Despensers were then formally stated.<sup>178</sup>

<sup>171</sup> 12 Edw. 2 (1318), 1 Stat. of the Realm, p. 177 to 179; 1 Statutes, Revised ed., 1870, p. 121 to 124.

<sup>172</sup> 1, "That the tenants in assize of novel disseisin from henceforth may make attorneys;" 2, as to "when a deed, release, acquittance, or other writing is denied in the king's court wherein witnesses be named;" 3, as to how "inquests may be taken in the country;" 4, as to what may be done by "justices of nisi prius;" 5, as to an indenture between a sheriff and the bailiff of a franchise; and the sheriffs and bailiffs putting their names with the

returns. 1 Stat. of the Realm, 177 to 179.

<sup>173</sup> *Id.*, p. 176. The statute as to "the manner of challenging essoins," is in *Id.*, pp. 217, 218. "Statute for view of land and essoin in the king's service;" and "Statute concerning the Great assizes and battle" are in *Id.*, p. 218.

<sup>174</sup> *Id.*, p. 344, and notes.

<sup>175</sup> *Id.*, p. 344.

<sup>176</sup> *Id.*, pp. 345, 346; 1 Stat. of the Realm, 180, 181.

<sup>177</sup> 2 Stubbs's Const. Hist., ch. 16, p. 347.

<sup>178</sup> 1 Stat. of the Realm, 181, 182.

"The sentence is passed in the name of the peers, in the presence of the king; father and son are condemned to forfeiture and exile, not to be recalled but by the assent of prelates, earls and barons, and that in parliament duly summoned. The award was accompanied by a formal grant of pardon to the prosecutors for all breaches of the law committed in bringing the accused to justice."<sup>179</sup>

20. *Of conduct to the Queen at Leeds Castle, in October, 1321. How Bartholomew lord Badlesmere was tried and punished. To whom the term 'justiciarius regis' was now applied.*

In October, 1321, at Leeds Castle, "Queen Isabella suddenly appeared late in the evening and demanded lodging for herself and a very considerable retinue." The Castellan, Walter Colepeper, refused to admit her; and she was forced to obtain a lodging for the night in the neighbourhood. She complained to the king; and he assembled a force for punishing the contemptuous and insulting treatment to which his Queen had been subjected. The besieged, finding that they were not to be succoured, surrendered on the first of November. Of them Walter Colepeper and twelve others suffered death.<sup>180</sup> Afterwards, "Bartholomew lord Badlesmere, at Canterbury, April 14," was tried "by the king's justices and condemned."<sup>181</sup>

Referring to a passage in Leland's Collectanea (i., p. ii, 275), and the statement by Gervas of Canterbury, as to *Geoffrey de Say* and *William de Dyne* (or Dyve) that they were sent into Kent to enquire '*de fautoribus Badelesmer*,' and are called '*justiciarii regis*,' Mr. Foss observes that "the term '*justiciarius regis*' was at that time applied not only to the judges of the two benches and the justices

<sup>179</sup> 2 Stubbs's Const. Hist., ch. 16, pp. 347, 348. Aug. 22, the parliament separated. *Id.* Of the proceedings against the Despensers there is further information in 1 State Tr. 23 to 38.

<sup>180</sup> From pages 112, 113 and 114 of "The History and description of Leeds Castle, Kent, by Charles Wykeham Martin, Esq., M. P. F. S. A.;" published at Westminster in 1869. On page 116, there is the following as to visits of Edward to Leeds: "He was at Eltham

October 20th and 21st (Rot. Literarum Patentium); at Rochester 22d and 23d; at Boxley 24th and 25th; and at Leeds 26th, 27th, 28th, 29th and 31st; November 1st, 2d, 3d and 4th. Here it appears that he was present at the siege, and remained to take possession after the surrender." See also Miss Strickland's Queens of England, vol. 2, pp. 135, 136, of Phila. edi., 1857.

<sup>181</sup> 2 Stubbs's Const. Hist., p. 350, note 3; citing Parl. Writs ii, 284.

of assize, but also to any others who were appointed on a special judicial commission."<sup>182</sup>

21. *How energy was developed in Edward's character. State of things after the battle of Borough bridge, March 16, 1321-2; the Earl of Lancaster condemned and beheaded. What had been his idea of government. In parliament at York in May 1322 repeal of ordinances of 1311. What is now done as to the Despensers; and their pursuers.*

What had occurred at Leeds Castle, and other circumstances, developed in Edward's character energy which had not been calculated upon. Early in December he obtained an opinion from the convocation of the clergy that the proceedings against the Despensers were illegal. At Gloucester, on the 11th of February, 1321-2, he felt himself strong enough to recall the favorites. Lancaster was preparing to march southwards. Edward called a general levy to Coventry on the 28th of February, with the purpose of intercepting the earl; but the latter, having reached Burton on Trent with an inferior force, turned and fled.

"The battle of Borough bridge, in which Sir Andrew Harclay defeated and took captive the earl of Lancaster, was fought on the 16th of March. There the earl of Hereford and four other barons were slain. Six days after his capture, the great earl, in his own castle of Pomfret, before a body of Peers, with Edward himself at their head, was tried, condemned and beheaded as a rebel taken in arms against the king."<sup>183</sup>

"The earl of Lancaster had never understood the crisis through which the nation was passing. His idea was to limit the royal power by a council of barons, to court the favour of the clergy, and to diminish the burdens of the people; not to admit the three estates to a just share in the national government. Hence, during his tenure of power, few parliaments were called, little or no legislation, except the ordinances, had been effected."<sup>184</sup>

In parliament at York<sup>185</sup> in three weeks from Easter, 15 Edw. II, it

<sup>182</sup> Foss's Biogr. Jurid., p. 227.

<sup>183</sup> "And convicted of dealing with the Scots." 2 Stubbs's Const. Hist., ch. 16, p. 349. "The minor leaders fell, one by one, into the king's hands." *Id.*, p. 350. "Earls of Kent, Richmond, Pembroke, Warenne, Arundel, Athol and Angus, were present." *Id.*, note 5.

<sup>184</sup> *Id.*, pp. 350, 351.

<sup>185</sup> This parliament sat in 1322, from the 2d to the 19th of May; then the commons were dismissed; but the magnates continued in council till July 7. 1 Stubbs's Const. Hist., ch. 16, p. 351, and *note*.

was considered that the ordinances made in 5 Edw. II (§ 8, p. 494) restrained the King's power contrary to what ought to be: it was declared that all things ordained in said ordinances shall for time to come lose their form and effect, and statutes and establishments duly made before said ordinances shall be 'abiding in their force'; and that matters to be established for the estate of the king and of the realm and of the people "shall be treated, accorded and established in parliaments" by "the King and by the assent of the prelates, earls and barons, and the commonalty of the realm; according as it hath been heretofore accustomed."

By judgment rendered in the same parliament at York, the award (mentioned in § 19, p. 514) against Sir Hugh le Despenser, the son, and Sir Hugh le Despenser, the father, as to their exile and disinherittance was annulled and defeated, and in the same parliament at York it was declared that the assent to the pardon mentioned in § 19, p. 514, was given for dread of the great force brought to the parliament; and the said pardon was repealed and annulled.<sup>186</sup>

*22. Of John de Stratford; among legal persons to advise the council or parliament; appointed chief judge of the court of Arches; in 1323 made by the pope bishop of Winchester. Proceeding against him in the king's bench; the case removed to parliament in Feb. 1324.*

*John de Stratford* was born at Stratford-on-Avon, in Warwickshire; and had property there. At Oxford he was educated at Merton College; and took the degree of Doctor of Laws.<sup>187</sup>

"That he occupied some official position as early as the year 1317 (10 Edw. II), there can be little doubt, as he was summoned among certain judges and other legal persons to advise with the council on various important subjects. In like manner he was summoned to parliament in the four following years; and from the place in which his name occurs, it would seem that he was either an officer of the Exchequer, or perhaps a clerk in the Chancery."

<sup>186</sup> 1 Stat. of the Realm, p. 185 to 190; Green's Hist. of Engl. Peop., book 4, ch. 1, p. 389, of vol. 1.

<sup>187</sup> He is believed to have been the nephew of Ralph Hatton de Stratford, bishop of London. Foss's Biogr. Jurid.



After which is the statement below.<sup>188</sup> Then there is by Mr. Foss a slip which is in contrast with his general accuracy. He says of John de Stratford:

"Archbishop *Hubert Walter* appointed him dean or chief judge of his court of Arches, in which office he exhibited, not less in his knowledge of law than in the adjudication of the cases before him, the quickest discernment and the most consummate prudence."

The appointment of *John de Stratford* as dean or chief judge of the court of Arches, could not have been by Hubert Walter, archbishop of Canterbury, the chancellor and adviser of John; for, as stated in ch. 13, § 2, pp. 236, 237, he died in 1205. But it may have been by Walter Reginald (or Raynald), who in 1313 succeeded Robert Winchelsey as archbishop of Canterbury.

From 1321 to 1323 John de Stratford "was engaged in frequent embassies to the papal court at Avignon; and being there, on the death of his colleague, *Reginald de Asser*, bishop of Winchester, on April 12 (*N. Fœdera* ii, 462-515), in the latter year, he succeeded, notwithstanding the king's urgent applications in favour of *Robert de Baldock*, in obtaining a bull from Pope John XXII, dated June 20, 1323, conferring upon him the vacant bishopric. The king's anger was excessive. He remonstrated with the pope, issued directions to the bailiffs of the different ports to arrest any messengers coming into England with letters on the subject, and expressed the bitterest rancour against the new-made prelate, calling him in one of his missives '*pseudo nuntium*' and '*adversarium nostrum*,' and dismissing him from his ambassadorial functions in terms of indignation. On his arrival in England, proceedings were immediately commenced against him, in the court of King's Bench, which were removed to the parliament summoned for Feb. 1324; in them he was addressed merely by his name, without the episcopal title, an omission which he, in his answers, was most careful always to supply. No further record of the process appears."<sup>189</sup>

<sup>188</sup> "On Sept. 13, 1319, he was admitted to the archdeaconry of Lincoln (*Le Neve*, 156); and in Dec. 1321, he was sent on a mission to the pope in the affairs of Scotland." *Id.*

<sup>189</sup> By the pope's intercession, Stratford was at last reluctantly recognized, and had his temporalities restored by a patent of June 28, 1324. It seems there was a bond of the bishop to pay the king £10,000, of which £8,000 was to

be void on the death of the king or the bishop; even of the other £2,000, no part was claimed during that reign; "for from that time he enjoyed the full confidence of the king, by whom he was employed in his negotiations with the court of France, and to whom he faithfully adhered when others had deserted the royal cause." Foss's *Biogr. Jurid.* In 4 Edw. III, "it is enacted that one recognizance of £2,000, which the

23. *Chancellorship of John Salmon from Jan. 26, 1320, until the summer of 1323. Robert de Baldock raised to the chancellorship Aug. 20, 1323. Statutes of 1323 and 1324, and others of uncertain date. May 26, 1324, William de Ayremynne became keeper of the King's Privy Seal, and was succeeded as Master of the Rolls by his brother Richard de Ayremynne, who on July 4, 1325, was succeeded by Henry de Cliff. Of the custody of the Great Seal in the Chancellor's absence.*

Although *John Salmon*, bishop of Norwich, who was appointed chancellor Jan 26, 1320, retained the office three years and a half, yet he seems to have been so much a sufferer from ill health, that the business of the chancery was frequently performed by others. *Robert de Bardelby*<sup>190</sup> is often styled one of the 'gardiens du Seal.' Into the custody of *Roger de Northburg*<sup>191</sup> (mentioned in § 13, p. 503) as keeper of the wardrobe, the king, on the 13th of April, 1321, in consequence of the chancellor's illness, delivered the Great Seal.<sup>192</sup> The delivery of the Seal on the 5th of June, 1323, to the custodes directed to act for *John Salmon* as chancellor, (he being then confined to his bed,)<sup>193</sup> may be considered as the date of his ultimate retirement, although the new chancellor was not named till the 20th

bishop of Winchester stood bound to pay to King Edward, the second should be void." Cotton's Abr., p. 9, after No. 24.

<sup>190</sup> From 30 Edw. I to 15 Edw. II (1321), he was a clerk of the chancery, and acted under no less than eight chancellors, and, during this period, was one of those entrusted with the keeping of the Great Seal in the chancellor's absence, or in a temporary vacancy of the office. Of the others, under whose seals the Great Seal was placed during part of this time, one was *Geoffrey de Welleford*; another was *Robert de Askeby*; yet another was *William de Cliff*. Foss's Biogr. Jurid.

<sup>191</sup> He, in 1314, accompanied Edw. II to Scotland as keeper of the royal signet

(*custos targie*), and was in April, 1316, keeper of the wardrobe. *Id.*

<sup>192</sup> It seems that "writs were then sealed in the presence of him and two of the clerks in chancery, after which the Seal was replaced in the wardrobe, where it remained at that and a subsequent period." He became, in 1317, archdeacon of Richmond, and, in 1322, bishop of Lichfield and Coventry. *Id.*

<sup>193</sup> He recovered from that sickness; for, in the following year, he went as ambassador to the court of France, and succeeded in negotiating a peace between the two kings. His health, however, again failing, he died at the priory of Folkstone, July 2, 1325, having presided over his diocese for nearly 26 years. *Id.*

of August following. On that day *Robert de Baldock*<sup>194</sup> was raised to the chancellorship.<sup>195</sup>

Many "Statutes of uncertain date" are mentioned below.<sup>196</sup> The date of all of them is considered as previous to Edw. III; and of some is more precise. There was in 16 Edw. II (1323) a 'statute for estreats of the Exchequer.'<sup>197</sup> The Statute 'of the King's Prerogative' was in 17 Edw. 2 (1324).<sup>198</sup> And 'The view of Frank pledge' is attributed to 17 or 18 Edw. 2.<sup>199</sup>

In 16 Edw. II (1323) is "*statutum de foma mittenda extractas ad scaccarium*" whereby the king sends to "*William de Ayremynne*, keeper of the rolls of our chancery, and his companions, keepers of our Great Seal" a form "according to which the estreats of our chancery, which shall be annually delivered at our Exchequer, ought hereafter to be made."<sup>200</sup>

In 1324, although on May 26 *William de Ayremynne* resigned, and his brother *Richard de Ayremynne*<sup>201</sup> was appointed to the office

<sup>194</sup> In 1314, 8 Edw. II, he became archdeacon of Middlesex. He filled probably from that time, and certainly two years afterwards, some office about the court, as from Feb. 1317 he was regularly summoned to the council and parliaments, among the judges and other legal personages. In June, 1320, he was keeper of the king's Privy Seal, and in the following year was sent by the king and council, with other solemn envoys, to treat for a peace with the Scots at Bamborough. *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> 1 'Statutes Revised,' edi. 1870, p. 124 to 140. "Statutes of the Exchequer" are p. 124 to 126. 'Statute concerning bakers, &c.,' p. 127. 'Statute concerning conspirators,' p. 127 to 129. 'Statute concerning tenants by the curtesy of England,' p. 129 to 130. 'That the Rector do not cut down trees in the churchyard,' pp. 130, 131. 'Of the King's Prerogative,' p. 131 to 134.

'The manner of doing homage and fealty,' p. 134. 'Statute concerning wards and reliefs,' pp. 135, 136. 'Of the chattels of felons,' pp. 136, 137. 'The view of Frank pledge,' p. 138 to 140.

<sup>197</sup> 1 Stat. of the Realm, p. 190 to 192.

<sup>198</sup> *Id.*, pp. 226, 227. This statute is expounded in 1 and 2 Ph. & M. in *Fulmerston v. Steward*, Plowd. 209; and in 2 Eliz., *Stradling v. Morgan*, *Id.*, 204. 17 E. II, 'Stat. de templariis' is cited in the margin of Co. Lit., 13 b. 'Stat. de terris Templariorum,' 17 Edw. II, is mentioned in the Supreme Court of the U. S. at Dec. T. 1855, in *Bacon, &c. v. Robertson, &c.*, 18 How. 483.

<sup>199</sup> 1 Stat. of the Realm, p. 246.

<sup>200</sup> 1 Stat. of the Realm, p. 190 to 192.

<sup>201</sup> Probably one of the clerks of the chancery, as on Dec. 2, 1319 (13 Edw. II), he is recorded as being present at a delivery of the Great Seal. Foss's Biogr. Jurid.

of Master of the Rolls, yet, the former having become keeper of the king's Privy Seal, the Great Seal was in August, during the chancellor's temporary absence, committed to William's custody; on Nov. 16 it was placed in Richard's custody, under the seals of two other clerks, till December 12.<sup>202</sup>

*Henry de Cliff*<sup>203</sup> was on July 4, 1325, (being then a canon of York) raised to the office of Keeper or Master of the Rolls.<sup>204</sup>

24. *Appointments in 1323 and 1324 of barons of the Exchequer, and judges of the King's Bench and Common Pleas. In March 1323-4 Hervey de Staunton was superseded as Chief Justice of the King's Bench and reappointed chancellor of the Exchequer. In July 1325 William Melton, archbishop of York, was constituted treasurer of the Exchequer.*

In 1323 *Robert de Ayleston*<sup>205</sup> became a baron of the Exchequer May 21; and *William de Fulburn*<sup>206</sup> June 1.<sup>207</sup> On the 9th of July *Walter de Friskeney* left this court<sup>208</sup> and was appointed a judge of the Common Pleas.<sup>209</sup> In September *Edmund de Passele* (or

<sup>202</sup> The chancellor, *Robert de Baldock*, being then engaged on a mission to the Scots. *Id.*

<sup>203</sup> Accompanied the king abroad in May, 1313 (*N. Federa* ii, 215). He is first mentioned in connection with the Chancery in May, 1317, when during the absence of the chancellor, (*John de Sandale*, bishop of Winchester,) the Great Seal was left in the bishop's house in Southwark, in charge of Master Henry de Cliff. Afterwards, till 1324, he was usually one, and, from 1321 to 1324, *William de Herlaston* was frequently another of the clerks in chancery, under whose seals the Great Seal was secured during the occasional absences of the chancellors. *William de Herlaston* was, in the latter part of this reign, keeper of the king's Privy Seal. *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> Canon of Salisbury in 1323, 17 Edw. II. He was keeper of the Privy Seal, and was employed in various counties to try the sheriffs and others accused of malversation and oppression. *Foss's Biogr. Jurid.*

<sup>206</sup> He held an office in the court, and was sent into Cambridgeshire and Huntingdonshire to instruct and assist the sheriffs in arresting the Knights Templars; and he was employed on special commissions for the trial of offenders. *Id.*

<sup>207</sup> He continued in this office during the remainder of the reign. *Id.*

<sup>208</sup> Besides being frequently employed as a justice in the country, he was one of those empowered to pronounce judgment upon the Mortimers in 16 Edw. II. *Id.*

<sup>209</sup> He remained in this court till the end of the reign. *Id.*

Passelewe)<sup>210</sup> was constituted a baron of the Exchequer<sup>211</sup> (on the 20th); and *Gooffrey le Scrope*,<sup>212</sup> a judge of the Common Pleas, (on the 27th).<sup>213</sup> *Henry le Scrope*, after retaining the office of chief justice of the King's Bench for above six years, was superseded<sup>214</sup> about September 1323, by *Hervey le Staunton*. The latter (after retaining the office a few months) was superseded the 21st of March by Henry's brother, *Gooffrey le Scrope*,<sup>215</sup> and was five days afterwards reappointed Chancellor of the Exchequer.<sup>216</sup> If *John de Stonore* was a justice of the King's Bench in 17 Edw. II (1323-4) it was but for a short time, for on May 3, 1324, he was again constituted a judge of the Common Pleas. In the same year (1324) *Humfrey de Waledene* was restored (Jan. 18) to his place on the Exchequer bench,<sup>217</sup> and *William de Everdon*<sup>218</sup> became a baron.<sup>219</sup>

On July 3, 1325, *William de Melton*, archbishop of York, (mentioned in §§ 1, 2, 7, pp. 485, 493) was constituted treasurer of the Exchequer.<sup>220</sup>

<sup>210</sup> In 16 Edw. I, one of the commissioners to enquire as to the damage done by the overflowing of the sea in the Isle of Thanet; in 3 Edw. II, specially employed by the king and council to attend to the king's pleas, and designated a serjeant. From that, till the 16th year, he was frequently engaged as a justice of assize. *Id.*

<sup>211</sup> The duties of which he continued to perform till the end of the reign. *Id.*

<sup>212</sup> Son of Sir *William le Scrope*, and brother of *Henry le Scrope*. In the parliament in Jan., 1316, 9 Edw. II, he is mentioned as suing for the king; and there being a grant for his expenses, he is called serjeant. In that character he was evidently summoned to the councils and parliaments of the seven subsequent years, and was occasionally added to some judicial commissions for the trial of offenders. In 14 and 16 Edw. II, he was employed in negotiating with the Scots. Foss's Biogr. Jurid.

<sup>213</sup> Fines were levied before him till the following Hilary Term. *Id.*

<sup>214</sup> In the same year he was made

custos of the forests beyond the Trent, which office he retained at the commencement of the next reign. *Id.*

<sup>215</sup> He presided in the King's Bench till the end of the reign. *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> He acted during the remainder of the reign. *Id.*

<sup>218</sup> He was appointed Octo. 11, 1311, treasurer's remembrancer, and had 40 marks *per annum* for himself and his clerks. In 10 Edw. II, he had an additional grant of £20 a year *de dono*, for his good service, until the king should provide him with an ecclesiastical benefice suitable to his degree. *Id.*

<sup>219</sup> He acted till the end of the reign. *Id.*

<sup>220</sup> As the king's friend, he was displaced on the transfer of the crown in Jan., 1327. During the troubles in the preceding year, his chapel was broken into, and his episcopal ornaments, including his pall, were stolen, and messengers were sent to the pope with the king's request for a new one. Foss's Biogr. Jurid.

25. *Of Edward II and his Queen, their son Edward and Roger Mortimer from the summer of 1324 until the winter of 1326-7. Of the Despensers, Robert Baldock the chancellor, Walter Stapledon the treasurer, Robert de Ayleston chancellor of the Exchequer, and Hervey de Staunton chief justice of the Common Pleas. Fate of Stapledon and the Despensers. How the king's son, Edward, was made (in October, 1326) guardian of the kingdom; John de Stratford (Nov. 6) locum tenens of the treasurer; the king and his chancellor captured Nov. 16. How and when the Great Seal was obtained from the king, brought to the queen and placed in William de Ayremynne's hands. How long custody of the seal was with him and Henry de Cliff, master of the Rolls. How and when Edw. II was deposed.*

Edward's weakness was, more than ever, conspicuous in the latter part of his reign. The king had fallen into contempt. Hatred of the Despensers and other favorites had risen to a high pitch; *Robert Baldock*, the chancellor, sharing the odium of the rest. The law was unexecuted; Roger Mortimer, the most important of the great prisoners of state, was suffered to escape from the Tower (Aug. 1, 1324).<sup>221</sup> In him the Queen, on going to France (May, 1325), found a counsellor, perhaps a lover. Young Edward having sailed Sept. 12, 1325, to perform the ceremony of homage as to foreign estates, was soon at his mother's side. She arranged for his marriage with the daughter of the count of Hainault; and obtained an escort and force for the invasion of England.<sup>222</sup> Walter Stapledon, the bishop of Exeter, who had been sent to France in the retinue of young Edward, returned home. By order to him as treasurer, the queen's estates were taken into the king's hands.<sup>223</sup>

<sup>221</sup> Miss Strickland's *Queens of England*, vol. 2, p. 138, of Phila. edi., 1857; 2 Stubbs's *Const. Hist.*, ch. 16, p. 354, note 3.

<sup>222</sup> *Id.*, pp. 356, 357. The king, by his letters, desired the return to England of his wife and son, and ordered his son not to assent to any marriage.

<sup>3</sup> Lingard's *Engl.*, ch. 4, p. 335; Miss Strickland's *Queens of England*,

vol. 2, p. 139 to 152, of Phila. edi., 1857. As to how money was obtained to defray the expenses of the expedition, which placed Edw. III upon the throne, see *Orig. Let.*, 3d series, by Sir H. Ellis, (Lond., 1846,) vol. 1, p. 39 to 43.

<sup>223</sup> 2 Stubbs's *Const. Hist.*, ch. 16, p. 358, note 2.

In 1326, on July 18, *Hervey de Staunton* was constituted chief justice of the Common Pleas; and gave up the seals of the Exchequer;<sup>224</sup> and *Robert de Ayleston* became chancellor of the Exchequer.<sup>225</sup>

September 1, *John de Radeswell*<sup>226</sup> (or Redeswell) was made a baron of the Exchequer.<sup>227</sup>

*William de Ayremynne* remained in France<sup>228</sup> till he accompanied Queen Isabella on her landing in England in September. On the 24th Isabella landed in Suffolk, proclaiming herself the avenger of earl Thomas and the enemy of the Despensers; the charges in her proclamation issued at Wallingford, Octo. 15, are particularly against the Despensers and Baldock. But Stapledon on that day (Octo. 15) at London, fell a victim to the violence of citizens. Unable to defend himself, the king fled first to Gloucester. Pursued thither, he passed into Wales;<sup>229</sup> failing to get to Ireland, he took refuge at Neath abbey.<sup>230</sup> The queen, having marched by Oxford, Gloucester and Berkely, arrived at Bristol<sup>231</sup> on Octo. 26; and there had Hugh le Despenser, earl of Winchester, hanged.<sup>232</sup>

<sup>224</sup> He died about the time the king was deposed, and was buried in St. Michael's church, Cambridge; he having founded the house of that name (now incorporated into Trinity College, where his name is introduced into the grace after dinner), and endowed it with the manor of Barenton. Foss's Biogr. Jurid.

<sup>225</sup> Whereby, it seems he vacated his seat on the bench. *Id.*

<sup>226</sup> Probably the complainant in the suit as to illegitimacy, mentioned in ch. 16, § 19, p. 414. In 18 Edw. II, he is mentioned as '*senescallum regis*' and principal custos of the lands and tene-ments of Queen Isabella in England and Wales. *Id.*

<sup>227</sup> He held this office only for the few remaining months of the reign. *Id.*

<sup>228</sup> His preferment in the church had been no less rapid than his civil advance-

ment. In addition to the valuable rectory, he successively received canonries in the cathedrals of St. Paul, Lincoln, York, Salisbury and Dublin; and through the influence of Queen Isabella, he obtained the papal nomination to the vacant See of Norwich, and was consecrated in France Sept. 15, 1325. Foss's Biogr. Jurid.

<sup>229</sup> 2 Stubbs's Const. Hist., ch. 16, pp. 358, 359.

<sup>230</sup> In Glamorgan county, 198 miles from London, 30 from Brecknock, 8 from Swansea, and 6 from Aberafon.

<sup>231</sup> 120 miles from London.

<sup>232</sup> 2 Stubbs's Const. Hist., ch. 16, pp. 359, 360. He was created earl of Winchester in 1322. Foss's Biogr. Jurid. The gallant old man was ninety. Miss Strickland's Queens of England, vol 2, p. 155, of Phila. edi., 1857.

A record<sup>233</sup> recites that "the king having left his kingdom without government, and gone away with notorious enemies of the queen, prince and realm; divers prelates, earls, barons and knights, then being at Bristol, in the presence of the said queen and duke (Prince Edward, duke of Cornwall), *by the assent of the whole commonalty of the realm there being*, unanimously elected the said duke to be guardian of the said kingdom; so that the said duke and guardian should rule and govern the said realm, in the name and by the authority of the king his father, he being thus absent."<sup>234</sup>

At Bristol, on Octo. 25, writs were issued for a parliament to meet Dec. 15; stating that the king would be on that day absent from the kingdom, but that the business would be transacted before the queen and her son, as the guardian of the realm. *John de Stratford*, bishop of Winchester, was, on Nov. 6, constituted *locum tenens* of the treasurer, and remained so for a short time. On Nov. 16 the king was captured, with Hugh le Despenser, the younger, and the chancellor Baldock. Hugh, on the 24th, suffered death at Hereford.<sup>235</sup>

"The king being" "brought back into England, the power" "delegated to the guardian ceased of course; whereupon the bishop of Hereford was sent to press the king to permit that the Great Seal, which he had with him (the prince having only used his private seal), should be used in all things that required it. Accordingly the king sent the Great Seal to the queen and prince. The bishop is said to have been thus commissioned to fetch the seal by the prince and

<sup>233</sup> In Brady's Hist. of Engl., vol. ii, Appendix, p. 66, and in Rymer, t. iv, p. 1237, which are both cited in Hall. Mid. Ages, ch. 8, part 3, p. 94, of vol. 2, Phila. edi., 1824.

<sup>234</sup> *Id.* Mr. Stubbs cites Fœd. ii, 646, and Parl. Writs ii, 349; and mentions that "the archbishop of Dublin, the bishops of Winchester, Ely, Lincoln, Hereford and Norwich, the earls of Norfolk, Kent and Leicester, Thomas Wake, Henry de Beaumont, William la Zouche of Ashby, Robert of Montalt, Robert de Morle, and Robert de Wateville with others, by assent of the whole 'communitas' of the kingdom, elected Edward to be 'custos' in the name and by the authority of the king during his ab-

sence." 2 Const. Hist., ch. 16, p. 360, note 1. Mr. Hallam is "satisfied that the commons' assent was pretended in order to give more speciousness to the transaction;" but says: "As the proceeding, however violent, bears evident marks of having been conducted by persons conversant in law, the mention of the commons may be deemed a testimony to their constitutional right of participation with the peers in making provision for a temporary defect of whatever nature in the executive government." Hall. Mid. Ages, ch. 8, p. 3 to 94, of vol. 2, Phila. edi., 1824.

<sup>235</sup> 2 Stubbs's Const. Hist., ch. 16, p. 360.



queen, and by the said prelates and peers, *with the assent of the said commonalty then being at Hereford.*"<sup>236</sup>

On Nov. 20, Adam Orleton, bishop of Hereford, was sent to demand the Great Seal from the king, who was then at Monmouth; he brought it on the 26th to the queen at Martley; on the 30th, at Cirencester, it was placed in the hands of *William de Ayremynne*, bishop of Norwich. New writs were drawn up for a meeting of parliament; the meeting being postponed till after December.<sup>237</sup>

*Henry de Cliff*, keeper or master of the Rolls, was on the 17th of that month, commanded to add his seal to that of the bishop of Norwich for the custody of the Great Seal; they, together, transacted the business till after the accession of Edward III, and his appointment of a chancellor.<sup>238</sup>

In 1326-7, on Jan. 7, the parliament met; the king being a prisoner at Kenilworth. Young Edward was led into Westminster Hall and declared king by the people. The reasons for crowning him were in six articles, drawn up by Bishop Stratford, containing charges against Edward II. Though the charges were taken as proved by common notoriety, yet it was thought advisable to send a committee to give notice to the king of the election of his son, procure from the king a resignation of his crown, and if he refused, give him back their homage, and act as circumstances might suggest. To the speech delivered to him at Kenilworth on Jan. 20, he made an answer, of which there are two accounts: one being that no act of his could be deemed free as long as he remained a prisoner, but he should endeavour to bear patiently whatever might happen:—the other, that he was sorry for having given such provocation to his people; submitted to what he could not avert; and thanked the parliament for having continued the crown in his family. Whereupon Sir *William*

<sup>236</sup> Mr. Hallam adds: "It is plain that these were mere words of course, for no parliament had been convoked, and no proper representatives could have been either at Bristol or Hereford. However, this is a very curious record, inasmuch as it proves the importance

attached to the forms of the constitution at this period." Hall, *Mid. Ages*, ch. 8, pt. 3, p. 94, of vol. 2, Phila. edi., 1824.

<sup>237</sup> 2 Stubbs's *Const. Hist.*, ch. 16, p. 360.

<sup>238</sup> Foss's *Biogr. Jurid.*

*Trussel* made an address, importing that as procurator of the earls, barons and others, he rendered and gave back to Edward, once king of England, their homage and fealty, and would thereafter not hold of him as king, but account him as a private person. And Sir *Thomas Blount*, the steward of the household, broke his staff of office and declared that all persons engaged in the royal service were discharged.<sup>289</sup>

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## CHAPTER XIX.

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### INSTITUTIONS IN THE REIGN OF EDWARD III—1327 TO 1377.

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1. In January, 1326-7, accession to the throne; proclamation; *John de Hotham* bishop of Ely, chancellor. In February, parliament. Of the standing council which it appointed; and the statutes which it enacted.

The accession of Edw. III to the throne being on Jan. 24, 1326-7, when his age was but fourteen years, two months and eleven days,<sup>1</sup> he may not be responsible for the deceitful proclamation issued in his name.<sup>2</sup> Affairs of state were conducted by a council of regency.<sup>3</sup> On the 28th *John de Hotham*, bishop of Ely, was entrusted with the chancellorship;<sup>4</sup> on the 29th the young king was crowned and the proclamation reissued;<sup>5</sup> on Feb. 3, he met parliament. Its first

<sup>289</sup> 2 Stubbs's Const. Hist., ch. 16, p. 360 to 363; 3 Lingard's Engl., ch. 4, p. 342 to 345; Green's Hist. of Engl. Peop., book 4, ch. 1, pp. 391, 392, of vol. 1.

<sup>1</sup> As stated in ch. 18, § 11, p. 500, he was born Nov. 13, 1312.

<sup>2</sup> Assuring the nation that his father had voluntarily abdicated, and wished

him to assume the government of the kingdom. 2 Turner's Engl., ch. 4, p. 164.

<sup>3</sup> *Id.*, p. 165.

<sup>4</sup> Foss's Biogr. Jurid.

<sup>5</sup> To this effect: "The Lord Edward, the late king had, of his own good will, and by common counsel and assent of the prelates, earls, barons, and other

measure was to appoint a standing council for the king; in which the first place was held by Henry, earl of Lancaster, who knighted the king and had him under nominal guardianship. Statute the first,<sup>6</sup> after a recital as to Hugh Spenser, the father, and Hugh Spenser, the son, and as to King Edw. III and his mother"; provides in ch. 1, "indemnity for those who took part with the king and his mother"; and in ch. 2 annuls "the repeal of the exile of the Spensers."<sup>7</sup> Chapter 3 begins with a general provision

"That the executors of the testament of all those that were of the same quarrel shall have actions and recover the goods and chattels of them, being of the said quarrel, whose executors they be, as they of the same quarrel."<sup>8</sup>

Statute the second, in 1 Edw. III, provides in ch. 1 "that the great charter of the liberties and the charter of the forest be observed and kept in every article." Among the other chapters are the following:

XI. "The Commons do grievously complain that when divers persons, as well clerks as lay people, have been indicted before sheriffs in their turns, and after, by inquests procured, be delivered before the justices; after their deliverance they do sue in the spiritual court against such indictors, surmising that they have

nobles, and of the commons of the realm, removed himself from the government, and willed that it should devolve on his heir; by the same advice and consent the son had undertaken the task of ruling." 2 Stubbs's Const. Hist., ch. 16, p. 368.

<sup>6</sup> *Id.*, pp. 368, 369.

<sup>7</sup> 1 Stat. of the Realm, 251. In 4 Lingard's Engl., ch. 1, p. 2, is the following: "The judgments given against the late earl of Lancaster and his adherents were reversed. Rym. iv., 245-264; Rot. Parl. ii, 3-6; 52 Knight, 2,556. The attainder against the earl of Lancaster was annulled, because he had not been arraigned in the king's court nor tried by his peers, 'though it was in time of peace.' How could that be, when, with a large force, he had besieged the castle of Tukill, and taken

the town of Burton? The answer is, that 'the chancery and courts of justice were still open, and the king had not displayed his banner.' Rot. Parl. ii, 4, 5, New Rym."

<sup>8</sup> Opposite the residue of ch. 3 are the words: "Assurances to the Spensers, &c., made by duress avoided." Ch. 4 is as to "averment against the record in a writ of false judgment;" ch. 5, as to "averment against false returns of bailiffs of liberties;" ch. 6, as to "an attainr as well upon the principal as upon the damages in trespass;" ch. 7, as to "inquiry concerning gaolers compelling prisoners to appeal;" ch. 8, as to "proceedings against offenders in forests." 1 Stat. of the Realm, 251 to 254. Chapters 4 and 5 of this first statute are in 'Statutes Revised,' pp. 140, 141, of ed. 1870.

defamed them, to the great damage of the indictors, wherefore many people of the shire be in fear to indict such offenders; the King wills that in such case every man that feeleth himself grieved thereby, shall have a prohibition formed in the *chancery* upon his case."

XIV. "Because the King desireth that common right be administered to all persons, as well poor as rich; he commandeth and defendeth that none of his counsellors, nor of his house, nor none other of his ministers, nor no great man of the realm, by himself nor by other, by sending of letters, nor otherwise, nor none other in this land, great nor small, shall take upon them to maintain quarrels, nor parties in the country, to the let and disturbance of the common law."

XV. "For the better keeping and maintenance of the peace, the King wills that in every county good men and lawful, which be no maintainers of evil, or barretors, in the country, shall be assigned to keep the peace."<sup>9</sup>

The parliament continued in session until the 9th of March.<sup>10</sup>

2. *Appointments in 1327 to the court of Exchequer, King's Bench and Common Pleas; and to other offices. Especially of the early life and offices of Richard de Bury (or de Aungerville), a future treasurer and chancellor.*

On the accession of Edward III, there were reappointed to the court of Exchequer, *Walter de Norwich*, as chief baron;<sup>11</sup> and *William de Fulborn*<sup>12</sup> and *William de Everdon*<sup>13</sup> as barons. In 1326-7, on Feb. 4, there was appointed as *second* baron, *William de Boredon*. He probably died before Octo. 15; for on that day *Robert de Nottingham*<sup>14</sup> was made *second* baron.<sup>15</sup>

*Walter de Friskenev*, who had been reappointed to the Common Pleas,<sup>16</sup> was placed on the King's Bench March 6, 1327.<sup>17</sup>

<sup>9</sup> 1 Stat. of the Realm, 255; \*Hale's edi. of F. N. B., 184; Legal Judic. in Ch., pp. 224, 225. This second statute is in 1 Revised Statutes, edi. 1870, p. 141 to 143.

<sup>10</sup> 2 Stubbs's Const. Hist., ch. 16, p. 368.

<sup>11</sup> He retained the office till his death, in 3 Edw. III. Foss's Biogr. Jurid.

<sup>12</sup> His name occurs last in a commission of May 11, 1328 (2 Edw. III). *Id.*

<sup>13</sup> He seems to have been living in 1328. *Id.*

<sup>14</sup> He was appointed remembrancer of the Exchequer June 21, 1322 (15 Edw. II). *Id.*

<sup>15</sup> He seems to have died or retired before April 16, 1329; on that day his successor was appointed. *Id.*

<sup>16</sup> Jan. 31, 1327. Foss's Biogr. Jurid.

<sup>17</sup> Where he sat till Trin. T., in 2 Edw. III; then is the last notice of him in the Year Book. *Id.*

*Robert de Malberthorp* is supposed to have been acting on the King's Bench from March 7, 1327.<sup>18</sup>

*Robert Baynard*<sup>19</sup> was raised to this bench March 9, 1327.<sup>20</sup>

Soon after the accession of Edward III, *William de Herle* was made chief justice of the Common Pleas,<sup>21</sup> and *John de Mutford*<sup>22</sup> *John de Stonore*<sup>23</sup> and *Walter de Friskene*<sup>24</sup> were reappointed justices thereof. In 1327, on Feb. 5, there was a patent to Sir *Henry le Scrope*, constituting him *second* justice of this court—the first instance of such a designation.<sup>25</sup> In March, on the 6th, *Walter de Friskene*

<sup>18</sup> Mr. Foss says: "His reappointment, on the accession of Edward III, was delayed on account of Queen Isabella's indignation against him, in consequence of his being concerned in the judgment pronounced, five years before, upon Thomas, earl of Lancaster. But he obtained his pardon on March 7, 1327, on the testimony of the prelates and peers, that he gave that judgment by command of the king, whom he did not dare to disobey, and to avoid danger to himself. Such is the disgraceful entry on the patent of pardon. (*N. Fœdera* ii, 690.) It may be presumed, therefore, that he was then permitted to resume his judicial functions. We accordingly find him acting as a justice of assize in this first year, and sitting in court in Hilary term of the second (Year Book.) On Feb. 2, 1329, he was named in the commission to try certain malefactors in the city of London (*N. Fœdera* ii, 755)." *Biogr. Jurid.*

<sup>19</sup> This son of *Fulco Baynard* (mentioned in ch. 15, § 12, p. 305, note 11,) was, so early as 18 Edw. I, returned as knight of the shire for Norfolk, and represented it till 20 Edw. II. The custody of Norfolk was committed to him in 5 Edw. II. In the two next years he was among the magnates specially summoned to par-

liament, but he may not have been a baron; in subsequent entries he is merely called 'Miles.' He was one of the conservators of the peace for the county, and was employed as a commissioner of array, and in assessing grants made by parliament. To him also was entrusted the custody of the bishopric of Durham, in 1311, on the death of Anthony Bek. *Foss's Biogr. Jurid.*

<sup>20</sup> The writ directing payment of his expenses as knight of the shire, in the parliament of the preceding January, is dated March 9, 1327, the same day on which he was raised to the judicial bench. He died in 4 Edw. III, in possession of Hautboys, Whatacre, and five other manors in Norfolk, leaving a son named Fulk. *Id.*

<sup>21</sup> His patent is dated Feb. 4, 1327. *Foss's Biogr. Jurid.*

<sup>22</sup> He acted for the first three years of the reign of Edw. III; the last fine before him is in Hilary 1329, in which year he was buried in Norwich cathedral. *Id.*

<sup>23</sup> Reappointed a few days after Edw. III was proclaimed king; Feb. 22, 1329, made chief baron. *Id.*

<sup>24</sup> Reappointed Jan. 31, 1327. *Id.*

<sup>25</sup> The fines acknowledged before him extend to Hilary, in the third year. *Id.*

ceased acting on this bench; on the 24th there was a patent to *John de Bourchier* (or Bousser) reappointing him a judge thereof.<sup>26</sup>

On the accession of Edward III, *Adam de Lymbergh*<sup>27</sup> became keeper of the privy seal; *Richard de Ayremynne* clerk of the privy seal;<sup>28</sup> *Thomas de Garton*<sup>29</sup> comptroller of the king's household and keeper of the wardrobe,<sup>30</sup> and *John de Houghton*<sup>31</sup> (or *Houton*) clerk of the keeper of the wardrobe.<sup>32</sup>

*Richard de Bury* (or de Aungerville),<sup>33</sup> was rewarded successively

<sup>26</sup> He by marriage with Helen, daughter and heiress of Walter de Colchester, became possessed of Stansted, in Halsted, and other manors in Essex. The date of the last fine levied before him is the morrow of the Ascension, 3 Edw. III (1329). He died soon after, leaving two sons, Robert and John, the former of whom became chancellor. *Id.*

<sup>27</sup> Of a Lincolnshire family. He was in 5 Edw. II (1311) a remembrancer of the Exchequer; and, in 1321, constable of Bordeaux, where he remained three or four years. *Id.*

<sup>28</sup> He is mentioned as such in 1327, March 1; on the 8th he was appointed custos of the House of Converts for life, which office had been filled by his brother William. Richard resigned it June 7, 1339. To his ecclesiastical preferments the chancellorship of the church of Salisbury was added July 16, 1329 (or 1339); he probably died about April, 1340. *Id.*

<sup>29</sup> A member of the clerical profession; appointed, in 18 Edw. II, to assist the bishops in removing foreign priests. *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> In early life connected with the Exchequer. In 19 Edw. II, he accompanied the king to France in that character, and was then the parson of the church of Postwick, a parish in Norfolk. In that county he had the manor of

Wormegay, and considerable property. *Id.*

<sup>32</sup> He was advanced to be one of the chamberlains of the Exchequer in 12 Edw. III. *Id.*

<sup>33</sup> This son of Sir *Richard de Aungerville*, a town in Normandy, assumed the name of Bury from the place where (in 1281) he was born, Bury St. Edmunds, in Suffolk. Left an orphan, the direction of his youthful studies and the general care of his education devolved on his uncle, John de Willoughby, a priest. In due time he was removed to Oxford, where he studied with so much diligence that he became distinguished for his learning and acquired the higher character of being pure in his life and manners. On leaving Oxford, he entered the convent of Durham as a monk. Thence he was withdrawn on being selected (probably about 1319 or 1320) as tutor of the king's eldest son. His exemplary conduct in this position was rewarded with the treasurership of Guienne, where he was established when Queen Isabella and his pupil, the Prince, went to France in 1325. The asylum he gave them there, and the pecuniary aid he afforded out of the royal treasures in his keeping, had nearly proved fatal to him. For although the latter may be said to have belonged to the prince, as his father had transferred

with the offices of cofferer, treasurer of the wardrobe and keeper of the privy seal.<sup>34</sup>

3. *Ill treatment of the ex-Chancellor Baldock, and the late King (Edw. II).* In 1327, the former died May 28; the late King was inhumanly murdered Sept. 21. In 1328, Edward III married; and there were four parliaments, one of which passed (in 2 Edw. III) the statute of Northampton.

The ex-chancellor, *Robert de Baldock*, being an ecclesiastic and committed to the custody of *Adam de Orlston*, bishop of Hereford, remained at Hereford till February, when he was removed to the bishop's house in London. There a mob invaded his prison, treated him with violence and thrust him into Newgate, where, after languishing about three months, he died May 28, 1327.<sup>35</sup>

Persecution of Edward the Second only ceased with his life. From Kenilworth to Corfe Castle, then to Bristol and afterwards to Berkeley Castle, he was harrassed with contumelious treatment; at the latter place, indignity and cruelty were continued until the 21st (or 22d) of September, 1327, when he was murdered in an inhuman manner;<sup>36</sup> it was a deed of wickedness and barbarity of the deepest dye; reflecting lasting disgrace and shame on all who took part in or promoted it, or failed to do what they might and should have done to prevent it. Parliament was sitting at Lincoln from Sept. 15 to Sept. 23;<sup>37</sup> its session may have closed without its having knowledge of the murder. The body was interred in the abbey of St. Peter, in

the duchy to him, yet he was pursued by emissaries of the Despensers, and escaping to Paris, had to conceal himself for seven days in the belfry of the church of the Friars Minors in that city. On his pupil's accession to the throne, he was retained near the king's person. Foss's Biogr. Jurid.

<sup>34</sup>To this last the appointment may not have been till about 5 Edw. III, when *Adam de Lymbergh* became

chancellor of Ireland. *Id.*

<sup>35</sup>Foss's Biogr. Jurid.

<sup>36</sup>1 Harl. Miscel., p. 91, of Lond. edi. 1808; 2 Hume's Engl., ch. 14, p. 168, of N. Y. edi. 1850; 3 Lingard's Engl., ch. 4, p. 347; 1 Mackintosh's Engl. p. 240, of Phila. edi. 1830; Miss Strickland's Queens of England, vol. 1, pp. 161, 162, of Phila. edi. 1857.

<sup>37</sup>2 Stubbs's Const. Hist., ch. 16, p. 374.

Gloucester.<sup>38</sup> Who were guilty of the murder came under consideration in a future parliament.<sup>39</sup>

At York, Jan. 24, 1328, the young king was married to Philippa of Hainault.<sup>40</sup> About this time his sister Jane was affianced to David (son of Robert of Scotland), a boy in his fifth year.<sup>41</sup>

There were four parliaments in 1328: (1) at York, Feb. 7–March 5, in which the truce with the Scots was concluded; (2) at Northampton, April 24–May 14, in which the truce was confirmed and the statute of Northampton<sup>2</sup> passed; (3) at York, July 31–August 6; (4)

<sup>38</sup> 4 Collyer's Engl., p. 56, of edi. 1775.

<sup>39</sup> In parliament at Westminster, the Monday next after the feast of St. Catharine, in 4 Edw. III, "Thomas of Berkeley, Knight, was arraigned for the death of King Edward the Second, for that the said king was committed to the keeping of the said Thomas and John Mautravers at the castle of the said Thomas at Berkeley, in Gloucester, where he was murdered. The said Thomas saith, that at the time of the death of the said king he lay sick at Beudley, without the said castle, and was not consenting thereunto; he, thereupon, did put himself in trial of twelve knights there named, who found the said Thomas not guilty, or that he fled or withdrew himself thereupon, but that he placed under him Thomas of Gornay, and William Ogle, who murdered the said king, Edward the Second." Cotton's Abr., p. 8, of Lond. edi. 1657. Mr. Turner says: "The murderers fled on the perpetration of this horrible enormity. One was taken at Marseilles, and beheaded on his way to England, that he might not impeach his employers; the other escaped to Germany, and lingered out there a clandestine and miserable existence, till he obtained a pardon and permission to return." Turner's Engl., edi. 1825,

book 2, ch. 3, p. 154 to 157; 3 Lingard's Engl., ch. 4, p. 347, *note*. Of the death of Thomas de Gournay, in 1332, and the conveyance of his dead body from Bayonne, there is an account by Dr. Lingard in same volume, appendix (D), p. 357 to 359.

<sup>40</sup> 2 Stubbs's Const. Hist., ch. 16, p. 370. Philippa having been married at Valenciennes by procurator, embarked for England, landed at Dover with her suite, arrived in London Dec. 23, 1327. Miss Strickland observes: "It was necessary for the lady Philippa and her escort to travel across England to meet the royal bridegroom, who was then performing his warlike noviciate on the Scottish border, under the auspices of his mother and Mortimer, against the great Robert Bruce." Queens of England, vol. 2, pp. 175, 176, of Phila. edi. 1857.

<sup>41</sup> 3 Lingard's Engl., ch. 1, p. 6 to 8; 2 Stubbs's Const. Hist., ch. 16, pp. 370, 371. By this marriage peace between England and Scotland was cemented. Edward and Philippa "kept Easter at York, and after the final peace with Scotland they returned southward from Lincoln to Northampton, and finally settled in June at the beautiful summer palace of Woodstock." Queens of England, vol. 2, p. 176.



at Salisbury, Oct. 16-31. The last was adjourned and sat at Westminster Feb. 9-22.<sup>42</sup>

The statute made at Northampton in 2 Edw. III<sup>43</sup> provides "that the great charter and the charter of the forest be observed in all points." Another of the chapters is

VIII. "That it shall not be commanded by the Great Seal nor the little seal to disturb or delay common right; and though such commandments do come, the justices shall not therefor leave to do right in any point."

That "justices of assize shall be also justices of jail delivery" was the subject of ch. 3, of 27 Edw. I.<sup>44</sup> This is recognized in ch. 2 of the statute made at Northampton. Others of its chapters are mentioned below.<sup>45</sup>

4. *In 1328 John de Hotham retired from the chancellorship, and was succeeded by Henry de Burghersh, who had been treasurer. Henry de Cliff continued Master of the Rolls.*

*John de Hotham*, bishop of Ely, retired from the chancellorship March 1, 1328.<sup>46</sup> If upon the accession of Edward III, the bishop

<sup>42</sup> 2 Stubbs's Const. Hist., p. 371, note (4.)

<sup>43</sup> 1 Stat. of the Realm, 257, *et seq.*; 1 Statutes Revised, ed. 1870, p. 143 to 148.

<sup>44</sup> 1 Stat. of the Realm, pp. 129, 130.

<sup>45</sup> Ch. 3 is as to "riding or going armed in affray of the peace." Ch. 4 confirms Statute of Lincoln, 9 Edw. II, concerning sheriffs, &c. Ch. 5 confirms Stat. Westm. 2 (13 Edw. I), ch. 39, concerning delivery of writs to the sheriff. Ch. 6 confirms Statute of Wynton (13 Edw. I). Ch. 7 is of "Justices assigned to enquire of felonies, robberies, &c." Ch. 9 is as to "Staples beyond the Sea and on this side." Ch. 10 is, "Pardon of fines for writs in chancery." Ch. 11 is "The Common Bench, not to be removed without warning." Ch. 12 is, "Hundreds and Wapentakes shall be annexed to coun-

ties and not let to ferm." Ch. 13 is of "Trespass in the late king's time." Ch. 14 is as to "Measure and assize of cloths imported." Ch. 15 is as to "Keeping of fairs for the time limited by charter," &c. Ch. 16 is, that "Inquests in the country shall be granted on request of the tenant." Ch. 17 is as to "Writ of deceit."

<sup>46</sup> During the remainder of his life he devoted himself to the administration of his diocese. His expenditure for his cathedral was enormous for those times: his confirmation to the see of the manor of Oldbourne, in London, is among the liberal acts which illustrated his presidency. During the last two years of his life he was disabled by paralysis; he died at his palace of Somersham Jan. 25, 1336, leaving a high character for piety, prudence and benevolence. Foss's Biogr. Jurid.

of Ely, as chancellor, and bishop Orlton,<sup>47</sup> as treasurer, "undertook the work of administration,"<sup>48</sup> it seems that neither continued long in that work. For Orlton, in the summer of 1327, had been succeeded at the treasury by *Henry de Burghersh*,<sup>49</sup> who, in May, 1328, received the Great Seal on the bishop of Ely's resignation."<sup>50</sup>

While *Henry de Cliff* was in the office of Master of the Rolls<sup>51</sup> the Great Seal was frequently entrusted to his custody. Sometimes another person was associated with him as one of its keepers. *William de Herlaston* is mentioned as such in 2 Edw. III, and several times during the following year.<sup>52</sup>

5. *Appointments in 1328, 1329 and 1330 to the Exchequer Bench, King's Bench and Common Pleas. Also as to justices itinerant, or of assize.*

In 3 Edw. III (1329) *John de Stonore*, who had been a judge of the Common Pleas, was made chief baron of the Exchequer Feb. 22.<sup>53</sup>

*Robert de Wodehouse*<sup>54</sup> was, on the 16th of April, replaced on the

<sup>47</sup> Adam de Orlton, bishop of Hereford.

<sup>48</sup> 2 Stubbs's Const. Hist., ch. 16, p. 368.

<sup>49</sup> His family derived its name from a manor in Sussex county. Its possessor, in the reign of Edw. I, was Robert de Burghersh, constable of Dover Castle and warden of the Cinque Ports, who died in 1306. Henry, born about 1290, is described in Statutes of Oriel College, Oxford, as son of Robert de Burghasse, Knt., and Matilda, his wife. His uncle, Bartholomew de Badlesmere, of Leeds Castle, Kent, was instrumental in procuring the king's intercession with the pope to raise him to the see of Lincoln. He was consecrated bishop July 20, 1320 (14 Edw. II). In the next year his brother and his uncle were in arms on the side of the Earl of Lancaster; Henry was in disfavor during the re-

mainder of the reign of Edw. II. Foss's Biogr. Jurid.

<sup>50</sup> 2 Stubbs's Const. Hist., ch. 16, p. 371, and note 2; Foss's Biogr. Jurid. In 1329 Burghersh accompanied the king to France. *Id.*

*Roger de Northburgh*, bishop of Lichfield and Coventry, is mentioned as holding the office of treasurer for two short periods in 2 Edw. III and 14 Edw. III.

<sup>51</sup> For the first seven years of this reign. He died about the beginning of Jan. 1334. Foss's Biogr. Jurid.

<sup>52</sup> *William de Herlaston* was a trier of petitions in parliament as late as 21, and a justice itinerant in 22 Edw. III. *Id.*

<sup>53</sup> Foss's Biogr. Jurid.

<sup>54</sup> Mentioned in ch. 18, § 13, p. 504; in 1 Edw. III, presented to the archdeaconry of Richmond. Foss's Biogr. Jurid.

Exchequer bench as *second* baron;<sup>55</sup> and *William de Cossale*<sup>56</sup> was also appointed a baron of the Exchequer in the same year (3 Edw. III).<sup>57</sup>

*John de Stonore* having left the Exchequer bench (Sept. 3),<sup>58</sup> *Henry le Scrope*, who on the 19th of December (on the return of his brother Geoffrey from abroad) vacated the office of chief justice of the King's Bench, was on the same day made chief baron of the Exchequer.<sup>59</sup>

*Geoffrey le Scrope*, who was in the office of Chief Justice of the King's Bench till the end of the reign of Edward II,<sup>60</sup> was reinstated Feb. 28, 1328, 2 Edw. III.<sup>61</sup>

*Henry de Hambury*<sup>62</sup> was appointed a judge of this bench in 2

<sup>55</sup> He again resigned his seat Sept. 16, when made chancellor of the Exchequer; by this title he had a grant to him in the next year of the manor of Ashele, with the bailiwick of the forests of Bere, in Hampshire. *Id.*

<sup>56</sup> So called from his manor of Cossale, in Nottinghamshire; he was a benefactor of Newstead abbey in that county. *Id.*

<sup>57</sup> He is not mentioned after 14 Edw. III.. *Id.*

<sup>58</sup> To be chief justice of the Common Pleas. *Id.*

<sup>59</sup> And continued on this bench during his life. From the patent of Nov. 18, 1333, making him chief justice of the Common Pleas, and one of the next day making him chief baron of the Exchequer, it is inferred that the removal into the Common Pleas was without his consent, and the restoration to the Exchequer at his solicitation. Besides other royal rewards he was made a knight banneret. He died Sept. 7, 1336, leaving possessions in Middlesex, Leicestershire, Hertfordshire, Rutlandshire and Bedfordshire, but chiefly in York county. He was buried in that county, at Easby, near Richmond, in the abbey of St. Agatha, of which he was esteemed the founder. *Id.*

<sup>60</sup> He was "removed from the office on the accession of Edward III, which not improbably arose from a suspicion of his being a partisan of the Despencers, and Baldock, the chancellor. Whatever was the reason of his non-appointment, he soon succeeded in clearing himself by the testimony of his peers, and was reinstated." Foss's Biogr. Jurid.

<sup>61</sup> He was appreciated by his sovereign, and was frequently employed in diplomatic engagements, which obliged him for a time to resign his place in the court. Thus, during his temporary absence, upon the occasion of Edward's going to France, in May, 1329 (3 Edw. III), there was a promotion (to the office of chief justice) of *Robert de Malberthorp* till Octo. 28 in that year, and of Geoffrey's brother, Henry, from the day last named till Dec. 19, 1330, when Geoffrey was reappointed. *Id.*

<sup>62</sup> Son of Geoffrey de Hambury, who resided at Hambury, or Hanbury, a parish in Worcestershire. He was made one of the judges of the King's Bench in Ireland in 17 Edw. II, and was raised to the office of chief justice of the Common Pleas there in the next year. Soon afterwards he removed to England. *Id.*

Edw. III (1328).<sup>63</sup>

Under circumstances stated in note 61, there was a temporary promotion to the office of Chief Justice of *Robert de Malberthorp*, from May till October 28, 1329;<sup>64</sup> and of *Henry le Scrope* from Octo. 28, 1329, till Dec. 19, 1330, when *Geoffrey le Scrope* was reappointed.

1330, Dec. 15, *Richard de Wilughby* was removed<sup>65</sup> into the King's Bench.

1330, Dec. 15, *Thomas de Louth*<sup>66</sup> was constituted a judge thereof.<sup>67</sup>

*Richard de Wilughby*<sup>68</sup> was placed on the bench of the Common Pleas in England, March 6, 1328.

In 1329 *John Travers*<sup>69</sup> was a judge of this court March 2.<sup>70</sup> On Sept. 3 *William de Herle* was superseded; then there was an advance of *John de Stonore* to be chief justice, and of *Richard de*

<sup>63</sup> Although he is mentioned as alive in 26 Edw. III, yet he is supposed to have retired from the bench before 12 Edw. III. *Id.*

<sup>64</sup> Mr. Foss says that *Robert de Malberthorp* remained on the King's Bench till Jan. 18, 1331, and was then removed into the Common Pleas. *Biogr. Jurid.*

<sup>65</sup> From the Common Pleas. *Id.*

<sup>66</sup> Second son of *Hugh de Louth* (mentioned in ch. 16, § 29, p. 445, note 410). *Id.*

<sup>67</sup> He remained therein only till the next year, when he was appointed chief justice of the King's Bench in Ireland. *Id.*

<sup>68</sup> The original surname of his family was Bugge; it was changed to Wilughby from their lordship of that name in Nottinghamshire. His father, Richard de Wilughby, purchased the manors of Wollaton, in that county, and Risley, in Derbyshire; and was, in 17 Edw. II, substituted by his son as representative

in parliament for Nottingham. The son was about the same time appointed chief justice of the Common Pleas in Ireland; but, on the accession of Edw. III, was removed from this position. He seems to have resumed practice at the English bar, being mentioned in the Year Book as an advocate in 1 Edw. III. Foss's *Biogr. Jurid.*

<sup>69</sup> Of a Lancashire family; member for that county in 33 Edw. I. He was, under Edward II, frequently employed there; as commissioner of array, assessor of the aids and custos of lands forfeited by Thomas, Earl of Lancaster. In 2 Edw. III, he was engaged with the seneschal of Gascony and the constable of Bordeaux in treating with German princes. *Id.*

<sup>70</sup> He is mentioned in the Year Book as late as Michaelmas, 1333. About that time he was appointed constable of Bordeaux; he died within four years after. *Id.*

*Wilughby* to be *second* justice of this court. On the 30th *Thomas Bacon*<sup>71</sup> was placed on this bench.<sup>72</sup>

*Lambert de Trikingham* mentioned in ch. 18, § 16, p. 509, was in this reign a justice itinerant; he is placed next to the chief justice in the commission into Northamptonshire as late as 1329.<sup>73</sup>

Though *William de Herle* was on Sept. 3, 1329, displaced from the bench of the Common Pleas by *John de Stonore*, yet he was at the head of the justices itinerant in Nottinghamshire in the following December, and also in the succeeding year in Derbyshire.<sup>74</sup>

Among the justices itinerant, or of assize, were *Gilbert de Touth-eby*,<sup>75</sup> *John de Ifeld*,<sup>76</sup> *John Randolph*,<sup>77</sup> *John de Radenhale*,<sup>78</sup> *Nicholas*

<sup>71</sup> Of the same family as that from which Sir Nicholas Bacon and Lord Verulam sprang. In Edw. II he was holding property in Stiffkey, Bacons-thorpe, and other places in Norfolk, which became part of their possessions. He was, perhaps, the Thomas Bacon, son of Sir Roger Bacon, of Bacons-thorpe, on whom that knight settled lands in Isbenham, &c., on his marriage with Johanna, daughter of Roger de Antringham, in 8 Edw. III. Thomas is named in the Year Books of Edw. III, both before and after he was a judge. *Id.*

<sup>72</sup> And received the honor of knight-hood. He was removed into the King's Bench Jan. 28, 1332. *Id.*

<sup>73</sup> Foss's Biogr. Jurid.

<sup>74</sup> *Id.*

<sup>75</sup> His name frequently appears in the Year Books during the reign of Edw. II, and, in the first two years of Edw. III, often abbreviated 'Toud.' In 9 Edw. II, he was employed in prosecuting and defending the king's suits, being at that time a king's serjeant at law. He was summoned next year among the legal assistants to parliament, and continued so to be during the remainder of the reign. He is first mentioned in a judicial capacity as one of the justices appointed in Lincolnshire in March 1318,

and most of his future commissions are in that county. These occasional employments as a judge did not prevent his pursuing his profession as an advocate; for not only is he found engaged as a serjeant at law in 14 Edw. II, but, on the accession of Edw. III, his stipend for prosecuting and defending the king's causes was renewed. He acted as a justice of assize under Edw. III; the latest mention of him is in 3 Edw. III. Foss's Biogr. Jurid.

<sup>76</sup> Born at Ifeld, in Kent. During the reign of Edw. II, he was employed in assessing aids imposed by parliament, and arraying the men-at-arms. (Parl. Writs ii, p. ii, 1037.) He was, in 1 Edw. III, one of the perambulators of forests south of the Trent; in 1329 a justice itinerant in Nottinghamshire. Next he represented his native county in parliament; as late as 13 Edw. III, he was a commissioner of array for Suffolk. *Id.*

<sup>77</sup> Mentioned in ch. 18, § 5, p. 490. In 2 Edw. III, he was named on a commission to try certain malefactors of France charged with indicting merchants of Southampton. In 1329 he was a justice itinerant into Northamptonshire; the last notice of him is in 4 Edw. III, when the custody of Por-

*Fastolf*,<sup>79</sup> *Peter de Middleton*,<sup>80</sup> *Thomas de Radeclive*,<sup>81</sup> *Robert de Thorpe*,<sup>82</sup> *William de Zouche* of Haringworth,<sup>83</sup> *John Claver*<sup>84</sup> and *William de Scothou*.<sup>85</sup>

6. *With the conduct of the king's mother and Roger Mortimer, earl of March, dissatisfaction was manifest after the king's uncle, the earl of Kent, was beheaded. In 1330 Mortimer was arrested; and parliament called. Its proceedings. What was enacted; especially as to actions by executors for trespasses in decedent's lifetime.*

The ill-gotten power retained for some years by Isabella and Mortimer<sup>86</sup> did not last.

chester castle and manor was committed to him. *Id.*

<sup>79</sup> He derived his name from the parish of Radenhale or Redenhale, in Norfolk, where, and in Suffolk, the family possessed property. John was employed in judicial investigations in the latter years of Edw. II; his name is in the Year Books as an advocate in 3 Edw. III. In 1329 he was a justice itinerant into Northamptonshire; he acted in other counties till 7 Edw. III. Foss's Biogr. Jurid.

<sup>79</sup> Of Great Yarmouth, in Norfolk, for which county he was returned to parliament in 2 and 7 Edw. II. In 18 Edw. II, he was appointed chief justice of the King's Bench in Ireland. He is mentioned in that character in 1 Edw. III (1327), and may have enjoyed that office until the patent of his successor, in 1333 (7 Edw. III). If so, he may have been on a visit to England when he was added to the commission of justices itinerant into Derbyshire, in 4 Edw. III. *Id.*

<sup>80</sup> This son of Adam de Middleton was a justice itinerant in Bedford county in 4 Edw. III, and, in 8 Edw. III, a justice of the forests in Yorkshire. In 9 Edw. III, the latter county was entrusted to his custody as sheriff. In the

next year he died. *Id.*

<sup>81</sup> Of Radcliff on Sore, in Nottingham county. He was summoned among the judges to the great council at Westminster, in 17 Edw. II; was the last named of six justices itinerant into Bedfordshire, in 4 Edw. III; and was subsheriff of Nottingham county in the same year. *Id.*

<sup>82</sup> A justice itinerant into Derbyshire, in 4 Edw. III (1330). He may have died in that year. *Id.*

<sup>83</sup> Also a justice itinerant into Derbyshire, in 4 Edw. III. It is supposed that he was a baron, and lived till March 12, 1352. *Id.*

<sup>84</sup> A native of Norfolk. He is among the advocates under Edw. II and III, and acted as custos of the see of Norwich during its vacancy in both reigns. He tallaged that county and Suffolk in 6 Edw. III, and in the next year was added to the commission of justices itinerant into Kent. *Id.*

<sup>85</sup> A justice itinerant for Kent in 22 Edw. III. It is suggested that he probably took his name from a parish so-called in Norfolk. Mr. Foss remarks that a Peter de Scothow was returned member for Norwich in 12 Edw. II. *Id.*

<sup>86</sup> 2 Stubbs's Const. Hist., ch. 16, p. 368.

"The earl of Lancaster was weary of his position; he had no personal hatred to the late king, and was shocked at his cruel death; he was conscious that the government depended mainly on his support, and yet that Mortimer was using him for his own ends; and he was not allowed any intercourse with Edward."<sup>87</sup>

There was a rising to deliver Edward from Mortimer's hands; to restore the power of the council; and to bring certain persons to account.

Edward's uncle, "the earl of Kent, persuaded, it was believed, by Mortimer's agents, that his brother was still alive, was drawn into a plot, which Mortimer was pleased to regard as treasonable, for a restoration. He showed him no mercy. In a parliament which met at Winchester on the 11th of March, 1330, he arrested him, had him tried by his peers and beheaded on the 19th."<sup>88</sup>

Edward reported his uncle's execution to the pope March 24.<sup>89</sup> "His visible dissatisfaction encouraged some to inform him that Mortimer was implicated in his father's destruction."<sup>90</sup> His eyes were opened to the conduct of Mortimer and his mother, and he was concerned at the part acted by himself.<sup>91</sup>

Having become a father,<sup>92</sup> and being nearly eighteen years of age, Edward "resolved to emancipate himself from his degrading tutelage."—In October, 1330, at Nottingham, Isabella "and Mortimer resided in the castle for security, guarded by their military friends. The king, by the concurrence of the governor, was admitted secretly at night, with a few brave friends, through a subterranean passage.

<sup>87</sup> *Id.*, p. 371.

<sup>88</sup> *Id.*, p. 372; 4 Lingard's Engl., ch. 1, p. 9 to 11; Miss Strickland's Queens of England, vol. 2, pp. 163, 164, of Phila. edi. 1857. The parliament was summoned Jan. 25, and sat from March 11 to March 23. 2 Stubbs, note 2.

<sup>89</sup> *Id.*, note 2.

<sup>90</sup> Turner's Engl., book 2, ch. 4, p. 176, of Lond. edi. 1825.

<sup>91</sup> 4 Lingard's Engl., ch. 1, p. 11; 2 Stubbs's Const. Hist., ch. 16, p. 371.

<sup>92</sup> The coronation of Philippa is said to have been at Westminster Feb. 18, 1330. 4 Lingard's Engl., ch. 1, p. 11, *note*; but it may have been somewhat

later. Miss Strickland mentions a summons from the king dated Feb. 28, 1330, to Bartholomew de Burghersh to appear with his barons of the Cinque Ports 'at the coronation of his dearest queen, Philippa,' 'the Sunday next to the feast of St. Peter;' and states that "it took place on that day." 2 Queens of Engl., p. 176, of Phila. edi. 1857. She also states that Philippa's "first born, afterwards the celebrated hero Edward, surnamed the Black Prince, was born at the palace of Woodstock June 15, 1330." *Id.*, p. 177. As to the day of 'S. Peter, in Cathedra,' see post in § 11, the last note.

Mortimer was seized in his bed-room," an apartment adjoining to the queen's.<sup>93</sup>

Notice of the arrest of Mortimer, Sir Oliver Ingham and Sir Simon Bereford was given to the sheriffs Octo. 22. On the 23d there was a call for parliament. Mortimer having been brought from Nottingham, was tried in a parliament holden at Westminster,<sup>94</sup> and condemned; there was judgment also against others associated with him.<sup>95</sup> Whether in these proceedings Magna Charta was sufficiently

<sup>93</sup> Turner's Engl., book 2, ch. 4, pp. 176, 177, of Lond. edi. 1825; 4 Lingard's Engl., ch. 1, pp. 12, 13. Miss Strickland's Queens of Engl., vol. 2, p. 165, *et seq.* In the attack on Mortimer, the king's confidant was William Montacute, afterwards made earl of Salisbury. "Besides Montacute, three Bohuns, Sir Robert Ufford, afterwards earl of Suffolk, the lords Strafford, Clinton, and Neville, of Hornby, assisted." 2 Stubbs's Const. Hist., ch. 16, p. 373, and note 3; Green's Hist. of Engl. Peop., book 4, ch. 2, pp. 396, 397, of vol. 1.

<sup>94</sup> "The Monday next after the feast of S. Catherine, in the fourth year of King Edward the Third." Cotton's Abr., p. 6. It is clear that the parliament was, in 4 Edw. III, 1 Stat. of the Realm, 261; that it sat from Nov. 26 to Dec. 9. 2 Stubbs's Const. Hist., ch. 16, p. 373, note 1; and it was in session on the 13th of March, 1330. 1 St. Tr., 51.

<sup>95</sup> As to the charges and judgment against Mortimer and his associates, see 2 Hume's Engl., ch. 15, pp. 184, 185, of N. Y. edi. 1850; 4 Lingard's Engl. ch. 1, pp. 13, 14; 1 Mackintosh's Engl., pp. 241, 242, of Phila. edi. 1830; 2 Stubbs's Const. Hist., ch. 16, p. 373. The articles of impeachment, and the judgment thereupon, are in 1 St. Tr., 51 to 54. Cotton's Abridgement of the proceedings of parliament, in 4 Edw. III, contains (pp. 6, 7,) the following:

"The treasons, felonies, and other misdeeds of Roger Mortimer, are particularly repeated, a great part whereof cannot be read, for that the roll is mouldred. But in the end it appeareth that the king charged the *Lords* and *Peers* who, as *judges of the land*, by the king's assent, adjudged that the said Roger, as a traitor, should be drawn and hanged. Whereupon the Earl-marshal, by commandment, with the aid of the mayor and sheriffs of London, and constable of the Tower, executed him the Thursday next after the first day of the same parliament."

2. "The judgment of Simon Bereford, Knight, as of counsel with the said Roger, whom the marshal executed the Monday next after Saint Thomas, the apostle."

3. "The like judgment was given against John Mautravers, Knight, as being guilty of the death of Edmund, earl of Kent, to be executed if the said John could be found; and that proclamation should be made, that whoso could bring the said John alive, should have a thousand marks for a reward; and who could bring his head five hundred marks."

4. "The like judgments were given against *Bogo de Bayon's* and *John Deverel*, for the cause aforesaid, and large rewards promised for their apprehension."

5. "The like judgments are had



regarded, came under consideration some years after Mortimer had been hung.<sup>96</sup> At the time of these judgments, in 4 Edward II, it was enacted "that albeit the Lords and Peers of the realm, as judges of the parliament, in the presence of the king, had taken upon them to give judgment of such as were no peers of the realm; *that hereafter no peers should be driven to give judgment on any others than on their peers.*"<sup>97</sup>

The queen mother, at the solicitation of the Pope, was spared the ignominy of a public trial; but Edward reduced her income to £3,000, and confined her to the manor of Risings, where she passed in obscurity the remaining 27 years of her life. The king annually paid her a visit of ceremony; he even added a thousand pounds to her yearly income; but he nevermore allowed her to assume any share of political power.<sup>98</sup>

Among the proceedings at the parliament in 4 Edw. III, there is mention in Cotton's Abr. of the subjoined;<sup>99</sup> and the following:

"It is enacted that all sheriffs shall be removed and other therein

against *Thomas of Gournay*, and *William of Ogle*, for murdering of King Edward the Second, with large rewards promised for their apprehension."

<sup>96</sup> To-wit: in 28 Ed. III. See *post* in § 40.

<sup>97</sup> Cotton's Abr., p. 7, No. 6. What was said as to this is mentioned in 1 St. Tr., 54, immediately after the judgment against *Simon de Bereford*, Knt., and in connection therewith.

<sup>98</sup> 4 Lingard's Engl., ch. 1, p. 14; Turner's Engl., book 2, ch. 4, p. 177, of Lond. edi. 1825; 1 Mackintosh's Engl., p. 243, of Phila. edi. 1830; 2 Stubbs's Const. Hist., ch. 16, p. 373. In 5 Edw. III, it was agreed that "Queen Isabel, the king's mother, shall have yearly £4,000 in rents or lands." Cotton's Abr., p. 10, No. 9. It may be inferred that in this way was made the addition of £1,000 mentioned in the text. "Isabella died at Castle Rising August 22, 1358, aged sixty-three. The church of the Grey Friars, where Mortimer had been buried,

was chosen by her for the place of her interment; there, in the choir, she was buried, and an alabaster tomb erected to her memory. Miss Strickland's Queens of England, vol. 2, p. 171.

<sup>99</sup> There were acts in favour of those who were "agreed with Edmund, earl of Kent, for the delivery of King Edward, the Second;" for restoration to persons whose lands were seized "by reason of the road made by the earl of Lancaster to Bedford, or by reason of the attempt made by the earl of Kent;" pardoning "the earl of Lancaster" and "others who were in his company;" providing that "no party do seek revenge" of them; restoring Edmund, eldest son of Edmund, late earl of Kent, "to the blood and lands of the said earl, his father," with dower to the countess of Kent; enacting that no person who procured the death of the earl of Kent should be impeached therefor, other than the earl of March, and Sir Simon Bereford, Mautravers, Bayones and Devarel

placed; and that general commissions be awarded to enquire of the oppressions of sheriffs, escheators and coroners."<sup>100</sup>

"That no justice shall defer, or stay the execution of justice, neither for the Great Seal, Letter or other commandment."<sup>101</sup>

'Statutes of the Realm' shew that at this parliament these things were enacted:

I. "That the Great Charter and the Charter of the Forest, and all other statutes, made as well in the time of the King's progenitors, as in the King's time that now is, be kept and maintained in all points."<sup>102</sup>

VII. "Whereas in times past, executors have not had actions for a trespass done to their testators, as of the goods and chattels of the same testators carried away in their life, and so such trespassers have hitherto remained unpunished; it is enacted that the executors in such case shall have an action against the trespassers and recover their damages in like manner as they, whose executors they be, should have had if they were in life."<sup>103</sup>

IX. "That no sheriff, bailiff of hundred, wapentake, nor of franchise, nor under escheators shall be from henceforth, except he have lands sufficient in the place where they be ministers, whereof to answer the king and his people, in case that any man complain against them."<sup>104</sup>

Such was the statute made at Westminster in 4 Edw. III. Thereof

(or Bevervile); for restoration to Richard de Arundel, eldest son of the late earl of Arundel; acquitting and making grants to William of Montacute, Sir Edward Bohun, Sir Robert Ufford and Sir John Nevil; making a release to Sir Eubal le Strange, and Alice, his wife, late the wife of Thomas, late earl of Lancaster; making restoration to William la Zouch, and Eleanor, his wife. Cotton's Abr., p. 7 to 9; No. 7 to 15; also Nos. 18, 19 and 24.

<sup>100</sup> Cotton's Abr., p. 9, No. 21.

<sup>101</sup> *Id.*, No. 23.

<sup>102</sup> 1 Stat. of the Realm, 261. Ch. 2 is as to assigning persons "to take assizes, juries and certifications, and to deliver the gaols"; and "to keep the peace." Chapters 3 and 4 are as to purveyance; ch. 5, as to "pardon for certain fines and grants"; ch. 6 confirms the statute of

35 Edw. I, stat. 1, as to religious persons.

<sup>103</sup> 1 Stat. of the Realm, 263. Ch. 8 is as to "fare of passages at the ports."

<sup>104</sup> "As it was ordained at another time at the parliament holden at Lincoln in the time of the king's father that now is, that is to say, in the ninth year of his reign." 1 Stat. of the Realm, 264. Ch. 10 is that "sheriffs and gaolers shall receive offenders without taking anything"; ch. 11, that justices of assize and *nisi prius* may enquire concerning maintainers, &c.; ch. 12, that "wines shall be assayed and sold at reasonable prices"; ch. 13, "confirmation of the statute 2 E. III, c. 2, touching pardons"; ch. 14, as to "annual parliaments"; ch. 15, that "sheriffs shall let their hundreds for the old ferm."

chapters two, seven, nine and eleven (or parts thereof) are retained in the 'Statutes Revised.'<sup>105</sup>

7. *Appointments in 1331, 1332, 1333 and Jan. 1334 to the Exchequer Bench, King's Bench and Common Pleas.*

On the bench of the Exchequer were placed

1331, Octo. 10 (5 Edw. III), *Thomas de Garton*,<sup>106</sup> as *second baron*.

1332, July 24 (6 Edw. III), *Adam de Steyngrave*.<sup>107</sup>

1332, Sept. 24 (6 Edw. III), *William de Denum*.<sup>108</sup>

1332, Nov. 2 (6 Edw. III), *Thomas de Blaston*.<sup>109</sup>

1332, Nov. 2 (6 Edw. III), *Robert de Scorburch*.<sup>110</sup>

<sup>105</sup> Edi. 1870, vol. 1, p. 149 to 151.

<sup>106</sup> Mentioned in § 2, p. 530, as comptroller of the king's household and keeper of the wardrobe.

<sup>107</sup> Of the knightly family settled at the manor of that name in the parish of Edenbridge in Kent. He remained on the Exchequer Bench till January 20, 1341; he was not in the new patent of that date. Foss's Biogr. Jurid.

<sup>108</sup> Of a family in Durham. William and his elder brother, John, were sons of Robert de Denum; they were serjeants; and probably the persons generally called J. and W. Devon in the Year Books of Edw. II and III. In the early part of the reign of Edw. III, William was frequently employed in conducting negotiations with Scotland; in 1329, he was an itinerant judge in Nottinghamshire; in 1331 he was constituted king's serjeant. *Id.*

There being no entry of him after 1332, he may have retired from the bench when he succeeded to the manor of Herdwick-Juxta-Hesilden and other large family estates, on his brother's death. William died in 1350. *Id.*

<sup>109</sup> Probably of Leicestershire. Thomas de Blaston, to whom the custody of the honor of Peverell in that and two other counties was committed in the reign of Edw. I, may have been father of this

baron, first mentioned in 3 Edw. III, when, under the title of 'clericus regis,' he was constituted the king's chamberlain in Chester. He held the rectory of Solihull in Warwickshire. *Id.*

<sup>110</sup> Not the same individual as *Robert de Scardeburgh* (mentioned *post* in § 14). The person mentioned above in the text, took his name from Scorbrough in the East Riding of Yorkshire; under the name of Scorburch he had a license in 17 Edw. II to assign a lay fee in Beverley and Etton; and was on special commissions in Yorkshire in 16 and 20 Edw. II; he was evidently added to the regular judges, as a serjeant has been in modern times. In 18 Edw. II, when he was on a commission of enquiry; his name was spelled Scoreburgh. In 2 Edward III there is a petition to parliament by the people of 'Scartheburgh,' relative to a trial before Robert de Scoresburgh and his companions, justices of *oyer* and *terminer*, in that town; and in 4 Edw. III he was amongst the justices itinerant into Derbyshire, as Scorburch. He is called Scorburch in 6 Edw. III, when appointed baron, and when he received knighthood; and in 7 Edw. III, when commissioned to treat with the earl of Flanders; his contemporary, Robert de *Scardeburgh*, being at the same time chief justice of the Common

1332, Dec. 18 (6 Edw. III), *John de Hildesley*.<sup>111</sup>

In the King's Bench came

1331, Jan. 4, *Geoffrey de Edenham*.<sup>112</sup>

1332, Jan. 28, *Thomas Bacon*.<sup>113</sup>

1332, March 28 to Sept. 20, by reason of the employment of *Geoffrey le Scrope* in diplomatic engagements (such as are mentioned in § 5, p. 535), *Richard de Wilughby* held the place of Chief Justice.<sup>114</sup>

1333, March 20, *William de Sharesull*<sup>115</sup> constituted a judge of the King's Bench.

1333, September 10. In consequence of *Geoffrey le Scrope* being about to go on a foreign embassy, *Richard de Wilughby* took the seat of Chief Justice.<sup>116</sup>

It is related of *Richard de Wilughby* that about Christmas, 1331 (which was before he was chief justice) he was, on his way to Grant-ham, attacked by one Richard Fulville, and forcibly taken into a wood where a gang of lawless men, large bodies of whom then

Pleas in Ireland.

On the death of Robert de *Scarburgh*, in 14 Edw. III, he is described, under the name of *Scardeburch*, as possessing the manor of Scorby, and also property in Stamford bridge and Etton, both of which are in the East Riding, and in the neighbourhood of Beverley and Scarbrough. His property was committed to the custody of Wolfand de Clistere, because Thomas, his son and heir, was an idiot. Foss's Biogr. Jurid.

<sup>111</sup> Parson of the church of Thynden, and canon of Chichester, in the reign of Edw. II; from 10 Edw. II till 7 Edw. III, continually employed in diplomatic missions. Superseded Sept. 9, 1334, on becoming chancellor of the Exchequer. He is so called in 12 Edw. III; and is named two years afterwards as a trier of petitions in parliament. *Id.*

<sup>112</sup> He had property in Lincolnshire, where there is a parish of that name;

and is last mentioned with *Thomas de Longevilliers* as possessing the manor of Hykle, in Lincolnshire, in 15 Edw. III. *Id.*

<sup>113</sup> From the Common Pleas. He does not appear to have exercised judicial functions after 10 Edw. III (1336); but if he were the son of Sir Roger Bacon, was still alive in 1359. *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> Born at the manor of Sharesull, in Stafford county; mentioned among the advocates in the Year Book of Edw. II. He was, in 5 Edw. III, a king's serjeant; in 6 Edw. III, one of the council whom the king selected to advise him, and about the same time invested with the knighthood of the Bath. *Id.*

He remained in the King's Bench but little more than two months, being removed into the Common Pleas on May 30 following. *Id.*

<sup>116</sup> *Id.*

infested the country, compelled him to pay for his life a ransom of ninety marks. This violence caused measures to put a stop to such combinations; it does not appear to have been of any permanent injury to him.<sup>117</sup>

In the Common Pleas came,

1331, January 18, *John de Cantebrig*.<sup>118</sup>

1331, January 18, *John Inge*.<sup>119</sup>

1331, March 2, *William de Herle* restored to the place of Chief Justice.

1331, April 1, *John de Stonore* placed in the second seat.<sup>120</sup>

1332, Jan. 28, *Thomas Bacon* removed from this court.<sup>121</sup>

1332, Feb. 3 (6 Edw. III), *Richard de Aldeburgh*<sup>122</sup> constituted a judge thereof.

1332, Feb. 3 (6 Edw. III), *John de Shardelowe*.<sup>123</sup>

<sup>117</sup> Foss's Biogr. Jurid.

<sup>118</sup> From 4 Edw. II, he was employed in judicial commissions in Cambridge county. He was returned member for it to several parliaments from the 14th to the 19th year, and is mentioned as counsel in the Year Books of Edw. II and Edw. III. In 3 Edw. III, he was one of the king's serjeants, and, as such, was in the commission into Northampton, &c.; on Octo. 22, he was made a knight *tanquam banerettus*. In 1331 he was seneschal of the abbot of St. Albans. Foss's Biogr. Jurid.

<sup>119</sup> Settled in Somersetshire, and employed from 10 Edw. II in judicial commissions within that county; he also acted there as assessor of aids granted by parliament. In 15 Edw. II, he was sheriff of Devonshire. Three years afterwards he held the castles, towns and honors of Roger de Mortimer in Wygton and Ludlow committed to his custody. He died about 20 Edw. III. *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> Into the King's Bench.

<sup>122</sup> Derived his name from Aldeburgh

(Aldborough), in Yorkshire, where he had a grant of lands in 12 Edw. II; seven years afterwards he purchased the manor of Hundeburton, and property in Mildeby. As counsel he is mentioned frequently in the Year Books of Edw. II, and the first five years of Edw. III. In 3 Edw. III he acted as the king's attorney in pleas of *quo warranto* at Northampton; and is noticed as one of the king's serjeants; in 5 Edw. III he was a commissioner for preserving peace between England and Scotland.

In 1332, when constituted judge, he was knighted. The fines levied before him terminate at Michaelmas, 14 Edw. III (1340); in which year he had a license to enclose one hundred acres of land in Righton, in Wharfedale. He is last mentioned (May 20, 1343) as the head of a judicial commission in Yorkshire. Foss's Biogr. Jurid.

<sup>123</sup> Of a family settled at Thompson, in Norfolk. Besides possessions in this county, he had manors in Suffolk and Cambridge, and considerable property in the latter. His name (as an advocate)

1334, Jan. 20, *John de Cantebrig* had a new patent.<sup>124</sup>

8. 1330, Nov. 28, *Henry de Burghersh*, bishop of Lincoln, was succeeded as chancellor by *John de Stratford*, bishop of Winchester. *William de Melton*, archbishop of York, restored to the treasurer-ship; thereto *William de Ayremynne*, bishop of Norwich, succeeded April 1, 1331. *Robert de Stratford*, brother of John, is made chancellor of the Exchequer. How far the Great Seal was, during John's chancellorship, entrusted in his absence to Robert and others. Of the parliament in 5 Edw. III. Afterwards John de Stratford was made archbishop of Canterbury. He was present as chancellor in the parliament of 6 Edw. III, but on Sept. 28, 1334, resigned the Great Seal.

After the downfall of Mortimer and Isabella, the king, though he gave to *Henry de Burghersh*, bishop of Lincoln, a general pardon, yet took the great seal from him and made *John de Stratford*, bishop of Winchester, chancellor, Nov. 28, 1330,<sup>125</sup> and immediately the latter was released from an old obligation mentioned in ch. xviii, § 22, p. 517, note 189.<sup>126</sup>

*William de Melton*,<sup>127</sup> archbishop of York, was restored to the treasurer-ship Nov. 28, 1330, and held the office to April 1st, 1331. *William de Ayremynne*, bishop of Norwich, was then appointed treasurer, and filled this office about a year.<sup>128</sup>

\* appears in the Year Books of Edw. II and III.

In 6 Edw. III, when constituted a judge he was created a Knight of the Bath. If he exchanged his court with Robert de Scardeburgh for that of the King's Bench on Sept. 6, 1339, the exchange seems to have been temporary. *Id.*

<sup>124</sup> For what reason does not appear. In the next year he died. His property was very extensive in the town and neighborhood of Cambridge. During his life, and by his will, he devoted a great part of it to the guild of St. Mary (in that town), afterwards Corpus Christi College, of which he was a member, and twice alderman. Foss's Biogr. Jurid.

<sup>125</sup> Foss's Biogr. Jurid.

<sup>126</sup> He accompanied the king to France

in the following April, both of them, according to Barnes, assuming the disguise of merchants, in performance of a vow; in the next November he was sent abroad relative to affairs of the duchy of Aquitaine, from which he returned in time to open the parliament at Westminster on March 12, 1332.

<sup>127</sup> In 1 Edw. III, employed in treating for peace with the Scots. In 4 Edw. III, indicted as an adherent of the earl of Kent; being acquitted, he obtained a writ of conspiracy against his accusers. *Id.*

<sup>128</sup> After presiding over the bishopric of Norwich nearly eleven years, he died at his house at Charing, near London, on March 27, 1336, and was buried in his cathedral. Foss's Biogr. Jurid.

*Robert de Stratford*, brother of John, was born at Stratford-on-Avon (as that brother was), and was parson of the church there; he became chancellor of the University of Oxford, and distinguished himself by his firmness and prudence in settling violent differences between northern and southern scholars as to the election of proctors.

His name occurs "April 1, 1331 (5 Edw. III), in the first chancellorship of his brother, who, being then about to accompany the king to France, sent the Great Seal to his house in Southwark, in charge of Robert, under the seal of the master of the Rolls, after which they both continued to seal with it till the chancellor's return, on April 20. In the same year he was made chancellor of the Exchequer.<sup>129</sup> The seal was again left in the hands of these two on Nov. 21 following; on June 23, 1332, *Robert de Stratford* was alone appointed by his brother to receive it, and to do the business appertaining to the office. During the time it now remained in his possession he was called the chancellor's *locum tenens*."—"He was a third time entrusted by his brother with the seal on April 6, 1334, to be kept by him under the seals of two of the clerks of the Chancery."<sup>130</sup>

The bishop of Winchester, being chancellor, stated the purpose for which parliament was holden at Westminster in 5 Edw. III.<sup>131</sup> At that parliament the things underwritten were granted.<sup>132</sup>

IX. "It is enacted that no man from henceforth shall be attached by any accusation, nor forejudged of life or limb, nor his lands, tenements, goods nor chattels seized into the king's hands against the form of the Great Charter and the Law of the Land."<sup>133</sup>

<sup>129</sup> *Id.*; citing *Cal. Rot. Pat.* 112. As to *Robert de Wodehouse* being previously chancellor of the Exchequer, see § 5, p. 534.

<sup>130</sup> Foss's Biogr. Jurid. Thomas de Baumbaugh, one of the clerks or masters in chancery, from 1 to 14 Edw. III (*Id.*), is noticed *post* in § 17.

<sup>131</sup> "The morrow after Saint Michael." Cotton's Abr., 9; 1 Stat. of the Realm, 265.

<sup>132</sup> "i. That the great charter and the charter of the forest shall be kept and firmly maintained;" ch. ii, as to purveyance; iii, confirming Stat. 35 Edw. I; iv, that "sheriffs, &c., shall have sufficient in the county;" v, "the penalty

for selling ware at a fair after it is ended;" vi, "process in attain;" vii, "attain in trespass, if the damage pass 40 shillings;" viii, "of the custody of prisoners by the marshals of the King's Bench," and "the penalty for letting prisoners go at large."

<sup>133</sup> 1 Stat. of the Realm, 267; ch. x, is as to "punishment of a corrupt juror;" ch. xi, as to "process against felons appealed, &c., in one county and dwelling in another;" ch. xii, "of pardon on outlawries;" ch. xiii, that "averment of plaintiffs (or for the king) shall be received against imprisonment alleged to defeat outlawry;" ch. xiv, as to "arrest of night-walkers and others suspected."

Of the statute made at Westminster in 5 Edw. III, chapters four, five, eight, nine, eleven and thirteen (or parts thereof) are retained in 'Statutes Revised.'<sup>184</sup>

In 1333, *William de Melton*, archbishop of York, was, on Aug. 10, appointed sole keeper of the Great Seal during the temporary absence of *John de Stratford*, the chancellor. He acted in that character till January 13, when he delivered up the seal by the king's direction.<sup>185</sup>

*John de Stratford* was translated to the see of Canterbury Nov. 3, 1333. In parliaments of 6 Edw. III<sup>186</sup> he was present as chancellor of England. But on Sept. 28, 1334, he resigned the Great Seal;<sup>187</sup> his brother Robert is now, for the first time, called archdeacon of Canterbury.<sup>188</sup>

9. In 1334, *Richard de Bury* (or *De Aungerville*) constituted treasurer Feb. 3, and raised to the chancellorship on Sept. 28. Of his habits, learning and taste; the valuable library collected by him; and his disposition of it. Of his work called '*Philobiblon*,' whereof an American edition was published at Albany by *Joel Munsell* in 1861.

Much more than is stated in § 2, pp. 530, 531, may be observed of this remarkable man.

"He held at first a small prebend in the church of Chichester;" "the king, in a letter to the pope on De Bury's behalf, calls him 'his secretary,' and speaking of his services, '*a pueritiâ nostrâ*,' uses these strong expressions: '*Quod novimus ipsum virum in consiliis providum, conversationis et vitæ munditiâ decorum, literarum scientiâ præditum, et in agendis quibuslibet circumspectum*.'"<sup>189</sup>

<sup>184</sup> Edi. 1870, vol. I, p. 152 to 156.

<sup>185</sup> He had confirmed and consecrated Robert de Graystones as bishop of Durham without first obtaining the king's approval; but, on March 30 following, there was a grant of the royal pardon to the archbishop for that offence. He died at Cawood, April 22, 1340, after presiding over his province for about 24 years, and expending considerable sums on his cathedral. Therein his remains

were deposited. The character of his life, both private and public, is high. Foss's Biogr. Jurid.

<sup>186</sup> Cotton's Abr., p. 11 and p. 12.

<sup>187</sup> Foss's Biogr. Jurid.

<sup>188</sup> He was also a canon in St. Paul's and Lincoln cathedrals. *Id.*

<sup>189</sup> "The object of this letter was to induce the pope to reserve for De Bury the prebends in the churches of Hereford, London and Chichester, with the



"In October 1331," De Bury "went with Anthony de Pesaigne on a mission to the pope at Avignon, where he formed an intimacy with Petrarch, among his conversations with whom is one relative to the island of Thule, on which, however, Petrarch complains that the learned ambassador was either unable or unwilling to offer any elucidation. On his return from this embassy, he was sent, with two others, to Cambridge, with a commission to enquire into the conduct and claims of such scholars as were supported in that university by the king's bounty."<sup>140</sup>

"King Edward estimated his ability and his prudence so highly that he fixed on him to fill the most important offices in the state. He was accordingly constituted treasurer on Feb. 3, 1334, and raised to the chancellorship on September 28, in the same year."

"He resigned the latter office (after holding it less than nine months) on June 6th, 1335."<sup>141</sup>

"He had the habit of turning all his time to account; and neither his meals nor his travels were spent idly. During the former he was read to by his chaplains, among whom were numbered some of the most celebrated men of the day; and afterwards he discussed with them the various subjects suggested by the reading. During the latter he occupied himself in forming what became the largest library in Europe, the possession of which was one of his greatest glories, and its accumulation formed his chief delight. He spared no expense in securing the most curious and valuable manuscripts, and speaks with evident glee of the motives which influenced

other benefices which Gilbert de Middleton, archdeacon of Northampton, lately deceased, had possessed. Before an answer could have been received to this application, De Bury was collated to" the vacant archdeaconry on January 6, 1330-1331. But the pope, according to what may have been "the too common practice of the day," took upon himself "the appointment, and, on the 1st of the following March, granted the dignity to Peter, one of his cardinals;" however, "prebends in the cathedrals of Lincoln, Sarum and Lichfield, were among the grants soon after made to De Bury." Foss's Biogr. Jurid.

<sup>140</sup> Foss's Biogr. Jurid. Mr. Foss supposes "it was probably during this visit that he became one of the guild of St. Mary's there, to the union of which, with that of *Corpus Christi*, the college of the latter name owed its foundation (Masters 9)." Biogr. Jurid.

"In 1332 he was admitted dean of Wells, and in the next year was sent again as ambassador to the pope, by whom he was appointed one of his chaplains. While he was absent on this mission, Lewis Beaumont, bishop of Durham, died; and the pope used the opportunity at once of exercising his own power, and of gratifying King Edward by setting aside an election made by the monks of Durham, and placing Richard de Bury in the vacant seat. He was consecrated at Chertsey on December 19, 1333." *Id.*

<sup>141</sup> He was employed in the next year, and some subsequent years, in embassies to France; an occupation to which his learning and talents were thought peculiarly fitted. His allowance on these missions was at the rate of five marks a day. (*New Fœdera* ii, 950.) Though frequently absent, he neglected none of the requirements of his diocese." *Id.*

the donors of some, and the difficulties he had to overcome in obtaining others. The stores he had thus collected he bequeathed to the students of Durham (since called Trinity) College, in Oxford, being the first public library that was founded in that university; and in his work called 'Philobiblon,' he not only gives instructions for its management but endeavors to excite a love of literature and a taste for the liberal arts. His own devotion to books may be estimated by the language he uses regarding them '*Hî sunt magistri qui nos instruunt sine virgis et ferulâ, sine verbis et colerâ, sine pane et pecuniâ. Si accedis non dormiunt, si inquiris non se abscondunt non remurmurant si oberres, cachinos nesciunt si ignores.*' His ardour in their pursuit did not end with their attainment. He read and used them; and he relates that the first Greek and Hebrew grammars that ever appeared in England were derived from his labours. He encouraged the acquaintance and assisted the enquiries of all learned and intelligent men, and never enjoyed himself so fully as in the pleasures of their conversation; and his understanding was so cultivated, his wit so piercing, and his spirit of enquiry so eager, that few subjects were beyond his genius and penetration.

His virtue and his charities were equal to his talents and learning. He was beloved by his neighbors, with whom he lived on terms of reciprocal affection; to his clergy he was an indulgent superior; to his tenants and domestics a considerate master. He was most bountiful to the poor, distributing eight quarters of wheat every week for the relief of those around him, and never omitting in his journeys to appropriate large sums for the indigent in those places through which he passed. He closed his useful life, in the 64th year of his age, at his palace of Auckland on April 24, 1345, and was interred in his cathedral.<sup>142</sup>

10. '*Modus tenendi parliamenti.*' *Whether division of parliament into two houses is to be referred to 6 Edw. III. Peculiar condition of Berwick after battle of Halidown Hill, in 1333; acts of parliament enacted for England and 'Berwick-upon-Tweed.'*

'*Modus tenendi parliamenti*' is published by Mr. Stubbs,<sup>143</sup> with the observation that "It is found in manuscripts of the 14th century, and

<sup>142</sup> Foss's Biogr. Jurid. Of Philobiblon (a treatise on the Love of Books), whereof the first edition was published in 1473, and a translation by J. B. Inglis, London, 1832, Mr. Allibone was glad to register an American edition published at Albany by Joel Munsell in 1861. Lord Campbell mentions having "chiefly followed an English

translation published anonymously in the year 1832; printed for that very learned and worthy bookseller, my friend, 'Thomas Rodd, Great Newport street.'" 1 Lives of Chancellors, ch. 13, p. 222, of 2d ed. (1846), p. 210, of Bost. ed., 1874.

<sup>143</sup> In "Select Charters," p. 492 to 503.

is shown by contemporary writs and records to be a fairly credible account of the state of parliament under Edward II."

Lord *Coke* refers to the treatise *de modo tenendi parliamentum* and to the concluding words of "the letters to the pope by all the nobility of England at the parliament holden in 28 E. I," and to the "Rot. Parl., 5 E. III, nu. 3," and "other places in the same roll," and "6 E. III, in divers places," as shewing "that the lords and commons sat together, and that the commons had then no continual speaker."<sup>144</sup> Mr. *Prynne* thinks that the *modus tenendi parliamentum* is too much magnified by Sir *Edward*.<sup>145</sup> He admits that the commons had then no speaker.<sup>146</sup> But that the lords and commons were then of one house, and sat and consulted together, he holds is a clear mistake.<sup>147</sup> In his view the record of the parliament in 6 E. III<sup>148</sup> warrants the statement, *not* that the "Lords and Commons were of one house"; *but* that "the Bishops by themselves, the Lords by themselves, and the Commons by themselves, consulted and advised the king." "The knights of the shire are especially mentioned as deliberating apart."—"The final division of parliament into" more than one house "must be referred to this period";<sup>149</sup> at least in one sense.

In 1333 the battle of Halidown Hill, a little north of Berwick, decided the fate of that town. From that time it has remained English territory.<sup>150</sup>

<sup>144</sup> "But after consultation had, they agreed upon some one or more of them that had greater aptitude for the present business to deliver their resolution."

4 Inst. 2.

<sup>145</sup> Preface to Cotton's Abr.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> In the parliament at Westminster, "the Monday next after the feast of S. Gregory," in 6 Edw. III.

"Sir *Jeoffery le Scroop*, in the presence of the king, by his commandment, declared," &c. "The bishops answered," &c.; "and therefore they, and the Proctors of the clergie, *went by themselves to consult therein, and the Lords and the Commons by themselves.*" Cotton's Abr., p. 11.

"*The Lords and the Commons return*, and, by the mouth of Sir Henry Beomont, think it best to," &c. *Id.*, p. 12.

In the parliament at Westminster, "the morrow after the nativity of our Lady," in 6 Edw. III, there was an adjournment until the Thursday following, at which time "*the Bishops by themselves, the Lords by themselves, and the Knights by themselves advised the King.*" *Id.*, pp. 12, 13.

<sup>149</sup> 2 Stubbs's Const. Hist., ch. 16, p. 376.

<sup>150</sup> 2 Hume's Engl., ch. 15, p. 190, of N. Y. edi., 1850; Green's Hist. of Engl. Peop., book 5, ch. 2, pp. 400, 401, of vol 1.

"As Scotland, it had its chancellor, chamberlain and other officers of state; and the peculiar heading of Acts of parliament enacted for England and the town of 'Berwick-upon-Tweed' still preserves the memory of its peculiar position."<sup>151</sup>

*II. Parliament at York in 8 Edw. III. Its enactments; one being as to Sir Jeffrey le Scoop, C. J., Sir Richard Willoughby and Sir William Shareshull.*

In parliament at York, in 8 Edw. III, after an enactment as to the Great Charter,<sup>152</sup> it was moved "that in every county be appointed one justice of the peace, learned in the law, who shall be chief."<sup>153</sup> To a petition 'that sheriffs may continue but one year, according to the Statute of Lincoln and Woodstock,' the answer was,

"The statutes therefore made shall stand, and the chancellor and others, who are appointed to make choice of sheriffs, shall name able men, who shall continue one year, or longer, according to their demeanour."<sup>154</sup>

No. 6 is as to "false jurors and maintainers." No. 7 is as follows:

"That all men may have their writs out of the Chancery for only the fees of the seal (without any fine) according to the Great Charter.

*Nulli vendemus justiciam.*

Such as be of course shall be so, and such as be of grace the king will command the chancellor to be therein gracious.

Nos. 8 and 9 are below;<sup>155</sup> the last number (22) is as follows:

22. "It is enacted, the King's Bench shall stay in Warwickshire after Easter next; for that Sir *Jeffery le Scoop*, Chief Justice, is busy in the King's weighty affairs,<sup>156</sup> whose place to supply Sir

<sup>151</sup> *Id.*

<sup>152</sup> "That the Great Charter of the Forest and other Statutes should be observed, and that such statutes as be obscure, by good advice, shall be made plain." Cotton's Abr., p. 15, No. 1.

<sup>153</sup> *Id.*, No. 2.

<sup>154</sup> *Id.*, No. 5.

<sup>155</sup> 8. "It is enacted that bigamy shall be tried only in Court Christian."

9. "That remedy may be had against

oppressions of the clergy for probates of wills and citations for trifles."

"The king will herein do his best, and chargeth the bishops to do the like."

<sup>156</sup> That Sir Jeffrey was, before this time, "busy in the king's weighty affairs," appears in the proceedings of parliament, in 6 Edw. III, at Westminster. (Cotton's Abr., pp. 11, 12,) and at York. (*Id.*, pp. 13, 14.)

*Richard Willoughby* is appointed, and *Sir William Shareshull* is assigned with him one of the Justices of the Bench."<sup>157</sup>

12. Of *Henry le Scrope*, chief baron of the Exchequer from 1330 to 1336; *William de Herle* chief justice of the Common Pleas from 1333 till 1337; and *Geoffrey le Scrope* chief justice of the King's Bench till 1338.

Mr. Foss in his article on *John de Stonore*, supposes that from the second seat in the Common Pleas he was "removed on July 16 1333, by *Geoffrey le Scrope*; but" that "on July 7 in the following year on the resignation of *William de Herle*, *Stonore* was reinstated as chief justice." Whereas in the same volume, in the article on *William de Herle*, it is said that the latter having been "restored to his place as chief justice on March 2, 1331," was "removed on November 18, 1333;" but that "*Henry le Scrope*, who was then appointed, resumed his seat at the head of the Exchequer on the next day," and that *William de Herle* from that day presided till July 3, 1337.<sup>158</sup> This statement—that *William de Herle* was chief justice of the Common Pleas from Nov. 19, 1333, to July 3, 1337—is quite consistent with what appears in Mr. Foss's article on *Henry le Scrope*—that he was made chief baron of the Exchequer Dec. 19, 1330, and continued on that bench during the remainder of his life;<sup>159</sup> and is also consistent with the following statement, as to *Geoffrey le Scrope*:

"Dugdale quotes a patent of July 16, 1334, 8 Edw. III, by which

<sup>157</sup> *Id.*, p. 16. This parliament is recorded as holden at York, *the next before S. Peter in Cathedra*, 8 E. III" (*Id.*, p. 15), which is believed to have been in February, 1334, the day of Peter in Cathedra at Antioch, being Feb. 22.

<sup>158</sup> When, at his own request, he was allowed to retire from his office on account of his age and infirmities. The patent spoke in eulogistic terms of his approved fidelity, the solidity of his judgment, the gravity of his manners, and his laudable and unwearied services to the state, and required him to re-

main on the secret council and to attend at his pleasure during the rest of his life. He lived nearly twelve years after his retirement, dying in 1347." Foss's *Biogr. Jurid.*

<sup>159</sup> Mr. Foss says: "There are, it is true, two patents bearing date respectively the 18th and 19th of November, 1333, 7 Edw. III, by the former of which he is constituted chief justice of the Common Pleas, and, by the latter, chief baron of the Exchequer. From this we can only infer that the removal into the Common Pleas was without his consent and the restoration to the Ex-

Scrope was constituted *second* justice of the Common Pleas in the place of *John de Stonore*, with an exemption annexed from being called upon to go out of the kingdom against the king's enemies against his will (Cal. Rot. Pat. 118). As no fines appear to have been levied before him, he probably did not long remain in that court, and certainly was not one of its eight judges enumerated by Dugdale (Orig. 39) in 11 Edw. III. It was perhaps about this time that he resumed his place as chief justice of the king's bench, which he certainly held on April 4, 1338, when the nomination of two new justices was directed to him in that character. He is mentioned in the Book of Assizes in the same year, and ultimately resigned his office before the following October, a payment being then made him as *nuper capitalis justiciarius*."

As previously he had been employed in negotiations,<sup>160</sup> so after his retirement from the King's Bench, *Geoffrey le Scrope* was engaged in many other diplomatic missions on behalf of the king; in one of which he is styled '*secretarius noster*.' Not only was he distinguished as a lawyer and negotiator but he was also prominent as a knight and a soldier.<sup>161</sup>

- chequer at his solicitation, the more especially as *William de Herle*, whom he was to have superseded in the former court, was immediately replaced." Besides other rewards for his services, Henry le Scrope was made a knight banneret. He died Sept. 7, 1336, and was buried in the abbey of St. Agatha at Easby, near Richmond, in Yorkshire, of which he was esteemed the founder. The possessions which he left were considerable in Middlesex, Leicestershire, Hertfordshire, Rutlandshire and Bedfordshire, but chiefly in York county. Foss's Biogr. Jurid.

<sup>160</sup> "He was employed by both his sovereigns to treat with the Scots, and by Edw. III to assist in the negotiations relative to the marriages between his sister Eleanor and the French king's eldest son, and between John, the son of the earl of Kent, and a daughter of one of the French nobles." Foss's Biogr. Jurid.

<sup>161</sup> At the tournaments held at Northampton, Guildford and Newmarket, at the first of which he was knighted, he gained great distinction. He accompanied the king in the invasion of Scotland, and displayed his banner and pennon at the affair of Stannow Park. He was one of the royal retinue several times in Flanders and France, with a train of two knights and forty men-at-arms; and he served at the siege of Tournay in July 1340, 14 Edw. III. Besides many valuable grants from both Edward II and Edward III, in reward for his services, he was, in 14 Edw. III, created a banneret, and had a grant of 200 marks per annum for the support of that dignity. (Report on Peerage, i, 354.) He did not long survive this last honour, but died in the same year at Ghent, in Flanders. His body was removed to Coversham, where it was buried in the church of the abbey, under a tomb on which his effigy was placed. *Id.*

13. *Additional appointments to the Exchequer Bench between August 1334, and July 1340.*

1334, November 9, *Adam de Lymbergh*.<sup>162</sup>

1336, October 3 (10 Edw. III), *Nicholas Haghman* (or *Hawman*).<sup>163</sup>

1336, November 10 (10 Edw. III), *John de Shordich*,<sup>164</sup> second baron.<sup>165</sup>

1337, March 20 (11 Edw. III), *Robert de Sadington*,<sup>166</sup> chief baron.<sup>167</sup>

<sup>162</sup> Mentioned in § 2, p. 530. From 5 to 8 Edw. III, he was chancellor of Ireland. He was probably in the English court of Exchequer from Nov., 1334, till his death, in 13 Edw. III. Foss's Biogr. Jurid.

<sup>163</sup> Probably son of Alan de Haghman and Amicia, his wife, who, in 5 Edw. I, became possessed of the manor and advowson of Eversley, in Hampshire; of which parish Nicholas was parson in 6 Edw. III. *Id.*

He was not included (as a baron) in the new patent of Jan. 20, 1341-2. *Id.*

<sup>164</sup> His name is derived from that of a parish formerly in the suburbs (and now part) of London. Of some houses of a Jew in the old Jewry, in the parish of St. Olave, in Colcherche street, there was a grant from the king to Benedictus de Shordich. Not improbably a son of his was John, an advocate in the court of Arches, who, in 18 Edw. II, was one of the nuncios to treat in Flanders, and, in 19 Edw. II, accompanied the king to France. (*N. Fœdera* ii, 550, 606.) He is styled '*legum doctor*' and '*juris civilis professor*;' and, for his services to Edw. II, was rewarded with the chief clerkship of the Common Bench, and with the manor of Passenham, in Northampton county. By a petition to parliament, in 4 Edw. III (after the king was freed from his mother's controul), he complained that he had been

ousted by the queen both of his office and a large part of the manor, whereupon compensation was awarded to him. (Rot. Parl. ii, 41.) From the previous year, to the end of his life, he was engaged in missions to different courts. *Id.*

<sup>165</sup> His name was omitted when the court was reconstituted, Jan. 20, 1341-2, but he was engaged in diplomatic employments till 18 Edw. III, about which time he probably died. *Id.*

<sup>166</sup> So called from a place of that name in Leicestershire. He is supposed to be son of John de Sadington in the household (valettus) of Queen Isabella, by whose request the custody of the hundred of Gertree, in that county, was committed to him. In 3 Edw. III, he was commissioned with the sheriff of Leicester, and another, to sell corn in certain manors which had fallen into the king's hands. He appears in the Year Books as an advocate from that time to 10 Edw. III, during which period he was placed on two or three commissions of enquiry. Foss's Biogr. Jurid.

<sup>167</sup> Prynne (on 4th Inst. 4) says, that he was the first chief baron whom he finds summoned to parliament, meaning, it is presumed, by that specific title. He acted July 25, 1339, as *locum tenens* of *William de Zouche*, the treasurer, then abroad; and from May 2, to June 21, 1340, held the office of treasurer. *Id.*

1339, September 26 *William de la Pole*,<sup>168</sup> constituted second baron.<sup>169</sup>

1340, June 21, *William de Northwell*,<sup>170</sup> constituted a baron.<sup>171</sup>

14. *Additional appointments to the King's Bench between August 1334, and July 1340.*

1334, September 14, *Robert de Scardeburgh*.<sup>172</sup>

<sup>168</sup> This son of *William de la Pole* (a rich merchant in the then rising port of Kingston-upon-Hull) was born at Ravenser, in that neighbourhood. To pay an advance made by him to meet the royal necessities, he had, in 1 Edw. III, a grant of £4,000 out of the first issues of the customs of the port of Kingston. In 1332 he sumptuously entertained the king on his visiting that town on his way to Scotland, and then, it is said, received the honour of knighthood, and for the principal office of the town procured the title of mayor, and was himself the first who bore it. He was in the next year employed on a mission to Flanders, and was several times engaged in similar duties during the six following years. In 9 Edw. III, he was constituted custos of the exchanges of England and receiver of the old and new customs of Hull and Boston. The immediate consideration of the last appointment was his undertaking to pay the expenses of the king's household at the rate of £10 a day. He was general agent for the crown, with the trading interest, and was commonly denominated the king's merchant. The king, in 12 Edw. III, gave him a royal acknowledgment for £10,000 advanced, and for £7,500 for which he had become bound; and in consideration of moneys paid by him in aid of the royal expenses and for defence of the kingdom, granted him various manors in Nottinghamshire and Yorkshire, and afterwards invested him with the order of knight banneret, adding other rents for

the support of the honour, together with a reversionary assignment of 1,000 marks of rent in France, when the king should recover his rights there. Besides this, houses in Lombard street, London, which had belonged to the '*Societas Bardorum*' were appended to the royal donation. (N. *Fœdera* ii, 862, 908, 1065, 1085; Abb. Rot., Orig. ii, 11-142.) Foss's Biogr. Jurid.

<sup>169</sup> In parliaments held in the next October and April, he was present as one of the judges (Rot. Parl. ii, 103, 112); on June 21 he was removed, or retired from the bench. *Id.*

<sup>170</sup> He was in holy orders; held the office of clerk of the kitchen in the household of Edw. II (Parl. Writs, ii, p. 82); was gradually advanced in position; and, in 11 Edw. III, was clerk or keeper of the wardrobe. He is so called as late as March 2, 1340. (N. *Fœdera* ii, 1116). Foss's Biogr. Jurid.

<sup>171</sup> He retired soon from his place as baron; it is thought in the summer or fall of 1340, on being appointed treasurer of the king's household. *Id.*

<sup>172</sup> He derived his name from Scardeburgh, in the North Riding of Yorkshire. In 5 Edw. III, he was at the head of a commission of assize into the islands of Guernsey, Jersey, Sark and Alderney. At the close of that year (1331) he was made chief justice of the Common Pleas in Ireland, in which character he is mentioned two years afterwards. In 13 Edw. III, he was in a commission of array for York. Foss's Biogr. Jurid.



1338, April 4, (12 Edw. III), *Robert Brundish*.<sup>173</sup>

1338, April 4, (12 Edw. III), *William Faunt*.<sup>174</sup>

1339, May 2, *William Scott*, removed<sup>175</sup> into this court.

1339, September 6, *Robert de Scardeburgh* changed his seat.<sup>176</sup>

15. *Additional appointments to the Common Pleas between August 1334, and July 1340.*

1334, September 24, *John de Trevaignon*.<sup>177</sup>

1337, March 18, *Roger Hillary*.<sup>178</sup>

1337, March 18, *William Scott*.<sup>179</sup>

1337, *William Basset*.<sup>180</sup>

<sup>173</sup> His name was probably derived from a parish in Suffolk, which is also frequently called Burnedish. In the reign of Edw. I, the manor of Morton, near Ongar, in Essex, was acquired by John de Burndish. John's son, Nicholas, was probably Robert's father or brother. *Id.*

<sup>174</sup> In Philipps's *Grandeur of the Law* (1684) two persons are mentioned as Faunt's descendants, one at Foston, in Lincolnshire, the other at Kingsthorpe, in Northampton county. *Id.*

<sup>175</sup> From the Common Pleas.

<sup>176</sup> With John de Shardelowe for the latter's place in the Common Pleas. Remaining there little (if at all) more than a year, he resumed his seat in the King's Bench Jan. 8, 1341, and retained it nearly four years. *Id.*

<sup>177</sup> Of a Cornish family, the descendants of which still flourish in this county. In the reign of Edw. II, he appears as an advocate; he had, in 4 Edw. III, the degree of the coif, and was afterwards one of the king's serjeants. He probably died in 1335. *Id.*

<sup>178</sup> Of an ancient family which possessed large property in the counties of Lincoln, Warwick and Stafford. Roger was son of William and Agnes Hillary. He is mentioned as an advocate in the

Year Books of Edw. II and Edw. III; he was raised to the Irish bench as chief justice of the Common Pleas in 3 Edw. III, where he remained for eight years. *Id.*

<sup>179</sup> Mr. Foss says: "If H. Phillips, in his '*Grandeur of the law*' (1684) is right in saying that Sir Thomas Scott, then of Scott's Hall, in Kent, was descended from him, it would seem that the original name of the family was Baliol, and that William, the brother of John Baliol, king of Scotland, who frequently wrote his name as William de Baliol *le Scot*, after the contest for the crown in the reign of Edward I, had terminated in his brother's overthrow, politically dropped his patronymic, and retained only the national addition he had assumed. In the reign of Edw. III, this family was seated in the parish of Braborne, in Kent; and it was not till Henry VI's time that they were removed to Scott's Hall, a manour in the neighbouring parish of Smeeth (Hasted viii, 5)." William Scott was a pleader in the courts from 3 Edw. III, and was, in 8 Edw. III, made one of the king's serjeants. Foss's *Biogr. Jurid.*

<sup>180</sup> A native of Staffordshire; an advocate in the reign of Edw. II, and in the first ten years of that of Edw. III. *Id.*

1339, May 2, *William Scott* removed from this court.<sup>181</sup>

1339, September 6, *John de Shardelowe*<sup>182</sup> exchanged his court.

1340, February 4 (14 Edw. III), *James de Wodestoke*,<sup>183</sup> made a judge.<sup>184</sup>

1340, May 23 (14 Edw. III), *Robert Parning*,<sup>185</sup> made a judge.<sup>186</sup>

16. *Of the parliament in 9 Edw. III; its enactment as to the mode of proceeding in a suit against two or more executors. Of the parliament in 10 Edw. III; its curious legislation. Also of parliament in 11 Edw. III.*

From the first of the statutes made in the parliament at York, in 9 Edw. III,<sup>187</sup> is taken the following part of chapter iii as to a "writ of debt brought against divers executors":

"Although some of them have appeared in the court and make default at the day that the great distress is returned upon the other, yet nevertheless he or they shall be put to answer, that first appeared, at the great distress returned; and in case the judgment pass for the plaintiff, he shall have his *judgment and execution against them that have pleaded*, according to the law heretofore used, and against all

<sup>181</sup> Into the King's Bench.

<sup>182</sup> Dugdale, who says that "he exchanged his court with Robert de Scardeburgh for that of the King's Bench on September 6, 1339," also "states that fines continued to be levied before him till a month after Mich. 1340:" therefore "it would seem that his absence from the Common Pleas was but temporary." *Id.*

<sup>183</sup> His place of birth may be presumed from his name, and from his being employed, in 9 Edw. III, to raise money for the king in Oxfordshire. He was of Holshute, in Hampshire, and was member for the county of Berks in 1336. From 8 Edw. III, his name occurs in commissions for the trial of offences, gradually rising therein to the highest position. *Id.*

<sup>184</sup> He died either in the latter part of

the year in which he was appointed, or the beginning of the next. At his death he was in possession of the manor of Brunes Norton, in Oxfordshire, and of that of Holshute, and of Appleton in Berkshire. *Id.*

<sup>185</sup> He was possessed of considerable property in Cumberland, and was returned to parliament in the last year of the reign of Edw. III, as one of the representatives of that county. He took the degree of a serjeant-at-law in 3 Edw. III; he is mentioned as the king's serjeant in 8 Edw. III, and frequently acted as a judge of assize before he was called to the bench. *Id.*

<sup>186</sup> Raised July 24, 1340, to the head of the King's Bench. *Id.*

<sup>187</sup> "On the morrow after the ascension." 1 Stat. of the Realm, p. 267, *et seq.*

other named, in the goods of the testator, as well as if they had all pleaded."<sup>188</sup>

In 10 Edw. III there was more than one session of parliament. The enactments at Westminster, the Monday next after Midlent,<sup>189</sup> are mentioned below.<sup>190</sup> Statute the third, enacted at Nottingham "the Monday next after the feast of St. Matthew the Apostle,"<sup>191</sup> was passed to lessen the number of courses at meals and the cost of each mess.<sup>192</sup> This curious legislation seems to have been during the second chancellorship of John de Stratford, when the seal had been given to his brother Robert as *locum tenens*.<sup>193</sup>

The only statute of the parliament in 11 Edw. III (1336-7),<sup>194</sup> is that mentioned below.<sup>195</sup>

<sup>188</sup> Ch. iv, p. 271, is that "where deeds are dated where the king's writ runneth not, inquests shall not be delayed for the absence of witnesses to the deeds." Ch. v, p. 272, is that "justices of assize, &c., shall send all their records determined into the Exchequer." Stat. 2 (in 9 Edw. III), pp. 273, 274, is as to money and plate.

<sup>189</sup> 1 Stat. of the Realm, p. 275, *et seq.*

<sup>190</sup> Stat. 1, on p. 275, confirms former statutes, and the Great Charter and the Charter of the Forest, and makes further provision as to pardons.

Stat. 2, pp. 276, 277, is as to purveyance; and contains, pp. 277, 278, articles as to "notorious malefactors, or maintainers of malefactors"; concerning sheriffs and hundreds; of gaols; of writs of niefy; and of return of money levied for archers, &c.

<sup>191</sup> 1 Stat. of the Realm, pp. 278, 279. Sept. 21 was the day of St. Matthew the Apostle.

<sup>192</sup> This statute recites that "through the excessive and over many sorts of costly meats which the people of this realm have used more than elsewhere, many mischiefs have happened."—"For the great men, by these excessess, have been sore grieved, and the lesser people,

who only endeavoured to imitate the great ones in such sort of meats, are much impoverished." It ordains that "no man, of what estate or condition soever he be, shall cause himself to be served, in his house or elsewhere, at dinner, meal or supper, or at any other time, with more than two courses, and each mess of two sorts of victuals, at the utmost, be it of flesh or fish, with the common sorts of pottage, without sauce or any other sort of victuals; and if any man choose to have sauce for his mess, he well may, provided it be not made at great cost; and if flesh or fish be to be mixed therein, it shall be of two sorts only, at the utmost, either fish or flesh, and shall stand instead of a mess; except on the principal feasts of the year" (which are specified); "on which days and feasts every man may be served with three courses at the utmost, after the manner aforesaid." *Id.*, pp. 278, 279.

<sup>193</sup> See next section.

<sup>194</sup> At Westminster, "the Monday next after the feast of Saint Matthew the Apostle." 1 Stat. of the Realm, pp. 280, 281.

<sup>195</sup> Against the exportation of wools; against the importation or use of foreign cloth, and against wearing fur in clothes;

17. *Of the Master of the Rolls—Michael de Wath, 1334–1337; John de St. Paul, after 1337. Of Henry de Burghersh, treasurer from 1334 to 1337. Of John de Stratford, chancellor, 1335–1337; Robert de Stratford, locum tenens in that time, and chancellor 1337–1338; Richard de Bynteworth, chancellor 1338–1339. Thomas de Baumbaugh, sometimes keeper of the Great Seal.*

*Michael de Wath*<sup>196</sup> received the appointment of Master of the Rolls on Jan. 20, 1334,<sup>197</sup> and held the office until April 28, 1337, when he was succeeded by *John de St. Paul*.<sup>198</sup>

The Great Seal having been resigned by *Richard de Bury*, June 6, 1335, was then restored to *John de Stratford*, and retained by him for nearly two years—viz., till March 24, 1337.<sup>199</sup> The Seal was with his brother Robert as *locum tenens* part, if not the whole, of the time between June 6, 1335, and March 24, 1337, when, on John's resignation, Robert was himself constituted chancellor. He was in the following September, raised to the bishopric of Winchester; and on the 6th of July, 1338, exonerated from the chancellorship.<sup>200</sup>

and encouraging cloth-workers of other lands to come into England, Ireland, Wales and Scotland. *Id.*

<sup>196</sup> Of a Yorkshire family. In 16 Edw. II (1332), when surety for an adherent of the earl of Lancaster, he is described as '*clericus*.' Two years afterwards he was in a commission to assist the archbishop of York in removing foreign priests in the East Riding of that county. In June 1332 (6 Edw. III) he was one of the tallagers there (*N. Fœdera*, 574, 840), and was probably a clerk in the chancery, which was often held at York. He was certainly acting as one of the clerks of the chancery in 1338 and 1340. Foss's Biogr. Jurid.

<sup>197</sup> And was sworn in at the abbey of St. Mary, at York. *Id.*

<sup>198</sup> A clerk in the chancery; and the last named of those to whom the custody of the Great Seal was entrusted at York, from Jan. 13 to Feb. 17, 1334, during the temporary absence of John

de Stratford, the chancellor. In 1340 the House of Converts, in Chancery Lane, was granted to John de St. Paul for life. The Great Seal was twice deposited with him and other clerks—viz., from July 6 to 19, 1338, and from Dec. 8, 1339, to Feb. 16, 1340; one of his associates during some part of the time being *Michael de Wath*. On the latter day (Feb. 16, 1340) *John de St. Paul* was appointed sole custos till the restoration of Archbishop Stratford, on April 28th. He again was such custos for a short time, on the resignation of the archbishop in the following June. *Id.*

<sup>199</sup> During the greater part, if not the whole, of this time, he was engaged in embassies to France and other powers; during the next three years he was employed in similar duties and in presiding over the council while the king was absent (*N. Fœdera*, ii, 883–1115). Foss's Biogr. Jurid.

<sup>200</sup> *Id.*

Two letters published by Sir Henry Ellis<sup>201</sup> are prefaced by the following observations:

"Edward the third, at this time had two chief ministers; John Stratford, archbishop of Canterbury, his chancellor, and *John Bouchier, bishop of Lincoln, his treasurer*. Walsingham, at the close of the events of 1335, tells us that the King kept the archbishop of Canterbury constantly near him. *The treasurer*, who was at a distance, *was, in all probability, the person to whom they were addressed*. The opening of the second letter, '*Reverendissime Pater, et Domine peramande*,' shews, at all events, that that letter was addressed to a churchman. Both are dated from York; one, June 19th, the other the 3d of August, 1336."

As to this it may be well to observe that *John de Bouchier*, or Bousser (mentioned in § 2, p. 530), died in or about 1329; and that *Henry de Burghersh*, bishop of Lincoln, "after being out of office for four years, had been made treasurer in 1334, but" was "*super-seded in 1337*."<sup>202</sup>

In 1338, July 6, the king appointed *Richard de Bynteworth*<sup>203</sup> (bishop of London) his chancellor. His sudden death, on December 8, 1339, ended his tenure of both the bishopric and the chancellorship before he had illustrated either by any memorable act.<sup>204</sup>

Among the clerks or masters in chancery from 1 to 14 Edw. III, was *Thomas de Baumburgh*.<sup>205</sup> He was a favorite with the king;<sup>206</sup>

<sup>201</sup> In vol. 1, p. 29 to 39 of 3d series of Original Letters.

<sup>202</sup> 2 Stubbs's Const. Hist., ch. 16 p. 384. This statement is consistent with what is mentioned in § 18, as to Robert de Wodehouse; and in § 19, as to *Robert de Sadington* and *Roger de Northburgh*.

<sup>203</sup> He had, in 9 Edw. III, a grant from the archbishop of Rouen of the manor of Bynteworth, now called Bentworth, in Hampshire, with the advowson of its church. He was employed in the previous year as one of the ambassadors to negotiate the marriage of the king's brother, John, earl of Cornwall, with Maria, daughter of Ferdinand of Spain, and, in several subsequent years, on

other missions, in all of which he is called '*juris civilis professor*.' In 11 Edw. III, he was keeper of the king's privy seal. He was a canon of St. Paul's at the time of the decease of Stephen de Gravesend, bishop of London, and was immediately called upon to fill the vacant see. His election to it was on May 4, 1338. Foss's Biogr. Jurid.

<sup>204</sup> *Id.*

<sup>205</sup> So called from the place now called Bamborough, in Northumberland, where he had property. *Id.*

<sup>206</sup> "Who presented him with the church of Emildon, and made him beneficial grants of lands in that county. *Id.*

and acted as keeper of the Great Seal on several occasions, in 1332, 1334, 1336 and 1339.<sup>207</sup>

18. *Of the king's absence in 1338; the lieutenant or keeper of the kingdom in his absence; and the treasurer during part of the time.*

The king embarked for the continent in July 1338.<sup>208</sup> In treating of Magna Charta, ch. 12 (as issued by Henry III), *Ld. Coke* quotes the words '*Nos vero si extra regnum fuerimus, capital' justic' nostri mittent justiciar' nostros per unumquemque comitatum*,'<sup>209</sup> and speaking of this *capitalis justitiarius*, says:

"This is he that is constituted by letters patents, when the king is out of the kingdom, to be *custos sive guardianus regni*, keeper of the kingdom and *locum tenens regni*, and for his time is *pro rex*, such as was *Edward*, duke of *Cornwall*, 13 E. III, *Lionel*, duke of *Clarence*, 21 E. III."<sup>210</sup>—"That this statute is to be intended of such a lieutenant or keeper of the kingdom," he considers "is proved by this act itself, *capitales justitiiarii nostri mittent justitiiarios nostros*, that is, they shall name and send justices by authority under the great seal under their own *teste*, which none can do but the king himself, if he be present, or his lieutenant, or the keeper or guardian of his kingdom, if he be, as this act speaketh *extra regnum*; and this exposition is made *ex verbis et visceribus actus*."<sup>211</sup>

During part of the time of the king's absence *Robert de Wodehouse*<sup>212</sup> filled the office of treasurer of the Exchequer.<sup>213</sup>

<sup>207</sup> He was in the latter year, 14 Edw. III, one of the receivers of petitions to parliament, and probably died soon after, as he is not subsequently named. *Id.*

<sup>208</sup> 1 Mackintosh's *Engl.*, p. 245, of *Phila.* edi., 1830; 2 Stubbs's *Const. Hist.*, ch. 16, p. 380.

<sup>209</sup> If we be out of this realm, our chief justices shall send our justices through every county." 2 *Inst.*, 24.

<sup>210</sup> *Ld. Coke* adds: "And the *teste* to all original writs were, *teste Lionello filio nostro charissimo custode Anglie*," &c. 2 *Inst.*, 26.

<sup>211</sup> *Ld. Coke* adds: "But then it is demanded whether this *locum tenens regis, seu custos regni* was called *capitalis justitiarius* before the making of this

act, and this very name you shall read in *Glanvill*, who saith '*Præterea sciendum quod secundum consuetudines regni nemo tenetur respondere in curia domini sui de aliquo libero tenemento, suo sine præcepto domini regis vel ejus capitalis justitiarii*, where *capitalis justitiarius* is taken for *custus regni*.'" 2 *Inst.*, 26.

<sup>212</sup> Mentioned in § 5, p. 534.

<sup>213</sup> He was promoted to this office March 10, 1339, but seems only to have continued in it till the following December. He probably died in Jan. 1345 (19 Edw. III). By his will, proved Feb. 3, 1345-6, he ordered his body to be buried in the choir of the Augustine monks, at Stamford. *Foss's Biogr. Jurid.*

19. *Of the treasurer in 1339 and 1340; whether Henry de Burghersh was in the treasurership in either of those years; when he died.*

*Robert de Sadington*, chief baron (as mentioned in § 13, p. 555), was, July 25, 1339, *locum tenens* of *William de Zouche*, the treasurer, then abroad; and from May 2 to June 21, 1340, held the office of treasurer.<sup>214</sup>

*Roger de Northburgh*, bishop of Lichfield and Coventry (mentioned in ch. 18, § 23, p. 518), held the office of treasurer for a short period in 14 Edw. III.

*Henry de Burghersh*, bishop of Lincoln, is "reputed to have possessed great natural abilities and extensive learning"; and was no doubt in the royal confidence for a considerable period.<sup>215</sup> But the statement in an article as to him,<sup>216</sup> that he is found "in the royal confidence as treasurer, from the eighth year of the reign till the end of his life," which terminated "at Ghent in December, 1340,"<sup>217</sup> is in conflict, not only with what is quoted from Mr. Stubbs in § 17, p. 561, but also with citations from Mr. Foss, in § 18, as to *Robert de Wodehouse*, and in this section as to *Robert de Sadington* and *Roger de Northburgh*.

20. *Two parliaments in 13 Edw. III; one in Octo. 1339, the other in Jan. 1339-40. Two Houses in each of these parliaments; increased weight of the commons. Case wherein before final judgment there were proceedings in a higher tribunal, and a writ sent to the court below to give judgment.*

As stated in § 10, p. 551, it is to 6 Edw. III that is referred the division of parliament into more than one house. Two *houses* are

<sup>214</sup> Foss's Biogr. Jurid.

<sup>215</sup> He "engaged in various negotiations as to Edward's claim to the crown of France, accompanying the king in his expeditions, and becoming bound for him for a loan of £10,000." *Id.*

<sup>216</sup> Foss's Biogr. Jurid., p. 142, of Boston ed., 1870.

<sup>217</sup> His body was removed to England

for burial in his own cathedral. He and his brother founded a grammar school in Lincoln, to which he left maintenance for five poor priests and as many poor scholars forever. The brother was ancestor of the earl of Westmoreland, and the baroness le Despenser and Burghersh. *Id.*

recognized in 13 Edw. III, in parliament at Westminster, in Quindena of S. Michael, and in 'the Octaves of S. Hillary.' In the former, though "the lords grant to the King," the commons made answer, "praying respite until another time";<sup>218</sup> in the latter

"The commissioners cause sundry of the Lords and Commons to assemble in the Chamber of presence, before whom, for that sundry of *both houses* were not come, they continued the Parliament from day to day until the Monday next after the Octaves aforesaid, during which time merchants, owners of ships and mariners did attend."<sup>219</sup>

A disposition in the former parliament (October 1339) "to make conditions before assenting to a grant";<sup>220</sup> did not cease after a new election. The conditions expressed in the latter parliament (Jan. 1339-40) were regarded by officers of state as important enough to require the king's personal consideration; he, in consequence, returned to England on Feb. 21, 1340.<sup>221</sup>

A case in 13 Edw. III is mentioned by Fitzherbert.<sup>222</sup> In that year may have been the following case; it appears to have been after William de Herle retired from the chief justiceship of the Common Pleas and while John de Stonore presided therein:

Sir *John Stanton* and *Anne*, his wife, by fine, give unto *T. de C.* certain lands in *H.*; the same *T.* thereby reverted them back to the same *J.* and *Anne*, his wife, to the heirs of *Anne*. After which Sir *J. S.* brought his *formedon en le descender* against said *J.* and *Anne* for the premises, wherein, after essoins and other delays by said *J.*, the same *Anne*, upon prayer, was received and vouched to warrant said *J.*; which voucher Sir *J.* counterpleaded: *Anne* verifieth and saith, if the court shall rule her to answer further she was ready; upon which counterplea there was in the common pleas a demurrer; upon which, for that said Sir *J.* could not get the judges to proceed in judgment, he presented to parliament a petition. Upon which there was sent to the justices a writ and an alias, requiring them to pro-

<sup>218</sup> Cotton's Abr., p. 17, No. 6 to 9.

<sup>219</sup> *Id.*, p. 19, No. 5.

<sup>220</sup> *Id.*, p. 17, No. 7, *et seq.*

<sup>221</sup> *Id.*, p. 19, Nos. 7, 9; 2 Stubbs's Const. Hist., ch. 16, p. 380, and p. 382. Mr. Green observes that "the final division of parliament into two houses," a change which was completed by 1341,

necessarily increased the weight of the Commons. "The enormous grants of 1340 were bought by the king's assent to statutes which provided remedies for grievances, of which the Commons complained." Hist. of Engl. Peopl., book 4, ch. 2, p. 414, of vol. 1, ed. 1879.

<sup>222</sup> Fitzh. Abr., tit. *Petition*.



ceed to judgment; and nothing being done by them, there was another petition by Sir J. "Whereupon the whole House commanded Sir *Thomas of Drayton*, clerk of the parliament, to go to Sir *John Stoner* and other of his companions of the common pleas, and to require them, according to the plea pleaded, to proceed to judgment, and if they could not so do for difficulty, then that they should, at a day, come into the house and bring with them the whole process and record. The justices at the day come into the parliament house with the record aforesaid, where, in the presence of all the lords, justices and others of the king's council learned, it was agreed that said Sir J., being a stranger to the fine, might well aver that T. had nothing therein, and that Anne could not vouch J., her husband, nor be received to the averment aforesaid, notwithstanding her protestation in the court, &c.; wherefore it was agreed that said J. should recover. And thereupon a writ, under the Great Seal, was sent to said justices to give judgment accordingly."<sup>223</sup>

21. *Ordinance in 14 Edw. III that the chancellor in a certain matter should have power to hear complaint by bill and proceed by subpoena in chancery. Also of the parliament in this year; its four statutes, of which the first is pertinent to a case mentioned in the preceding section.*

*Rot. Parliamenti 14 E. 3, Numero 33, Un ordenance fuit touchant le Priorie de West Shirborne, &c. Et que si rien soit fait encontre cest ordenance que adonque le Chancellor d' Engleterre averoit power doier le complaint per bill et sur ceo a proceeder en mesme maniere come est usuallement accustume a faire dayly en brief de Subpœna in chancery.*<sup>224</sup>

The parliament which the king met at Westminster "the Wednesday next after Midlent," in 14 Edw. III (March 29, 1340), had several sessions.<sup>225</sup> They resulted in four statutes; of which the first,<sup>226</sup> after provisions noticed below,<sup>227</sup> contains the following enactment pertinent to the "special and rare case, both for law and power of parliament," mentioned in the preceding section.

V. "Because divers mischiefs have happened, for that in divers places, as well in the Chancery as in the King's Bench, the Common

<sup>223</sup> This report of the case is in Cotton's Abr., p. 30; it is there printed at the end of the proceedings of parliament in 14 Edw. III, when, as will be seen in the next section, there was enacted a statute pertinent to cases of this class.

<sup>224</sup> 1 Rolle's Abr., tit. *Chancery* (E), p. 372, of edi. 1668; cited in 1 Spence's

Eq., 338.

<sup>225</sup> Cotton's Abr., p. 22 to 30.

<sup>226</sup> 1 Stat. of the Realm, 281.

<sup>227</sup> i. As to "confirmation of liberties;" ii. "The king's pardon of chattels of felons, of fines," &c.; iii. "Pardon of divers debts, &c., due the king;" iv. "Engleschrie and presentments thereof abolished."

Bench and in the Exchequer, before the justices assigned, and other justices, to hear and determine deputed, the judgments have been delayed, sometime by difficulty, and sometime by divers opinions of the judges; It is ordained, established and accorded that from henceforth at every parliament shall be chosen a prelate, two earls and two barons, which shall have commission and power of the King to hear by petition delivered to them, the complaints of all those that will complain to them of such delays or grievances done to them; and they shall have power to cause to come before them at Westminster, or else where the places of any of them shall be, the tenor of records and processes of such judgments so delayed, and to cause the same justices to come before them, which shall be then present, to hear their cause and reasons of such delays; which cause and reasons so heard, by good advice of themselves, the Chancellor, Treasurer, and Justices of the one bench, and of the other, and other of the King's council, as many and such as they shall think convenient, shall proceed to take a good accord, and make a good judgment; and according to the same accord so taken, the tenor of the said record, together with the judgment which shall be accorded, shall be remanded before the justices before whom the plea did depend; and that they hastily go to give judgment according to the same record. And in case it seemeth to them that the difficulty be so great that it may not well be determined without the assent of the parliament, that the said tenor or tenors shall be brought by the said Prelate, Earls and Barons with the next parliament, and there shall be a final accord taken what judgment ought to be given in this case; and according to this accord it shall be commanded to the judges before whom the plea did depend that they shall proceed to give judgment without delay."<sup>228</sup>

Of the same first statute of 14 Edw. III, subsequent chapters are on subjects mentioned below.<sup>229</sup> Chapters one, six, seven, eight, nine,

<sup>228</sup> "And to begin to do remedy upon this ordinance, it is assented that a commission and a power shall be granted to the archbishop of Canterbury, the earls of Arundel and Huntingdon, the Lord of Wake, and the Lord Ralf-Basset to endure till the next parliament." After which there was a provision as to oaths and the number of ministers. 1 Stat. of the Realm, pp. 282, 283.

This statute of 14 Edw. III, is recited in 9 Ric. II, in a commission "to thirteen commissioners, *de audiendo querulam Thomæ Lovel, de assensu parliamenti*, commanding the chancellor, the treasurer, the justices, and others of the king's counsel, to attend and

assist the said commissioners." 4 Hat-sell's Prec., Appendix No. 4, pp. 358, 359.

In 1689, May 1, in "Mr. Petyt's report on delays of judgments," &c., he says: "I conceive the statute of 14 Edw. III is still in force; but there are two things which will be necessary to put it in execution: The first is, that such prelate, earls and barons must be nominated by assent of parliament; the second is, that there must be a commission under the Great Seal granted by the king to them." *Id.*, p. 359.

<sup>229</sup> Ch. vi, making "records defective by misprision of clerks amendable;" vii. That "sheriffs shall be appointed

fourteen and sixteen (or parts thereof) are retained in 1 'Statutes Revised.'<sup>280</sup>

Other statutes of 14 Edw. III are as subjoined.<sup>281</sup> Statute 14 Edw. III, "of jailors or keepers, who by duress make the prisoners to be approvers," is cited in connection with the resolution *against* torture.<sup>282</sup>

22. *Of John and Robert de Stratford; in 1340 the chancellorship was in April in John for the third, and in July in Robert for the second, time. In November the King removed the Chancellor, several of the judges and other officers and caused arrests and imprisonments. The course now of John de Stratford Archbishop of Canterbury; his controversy with the King. By patent of 18 Jan. in 14 Edw. III, 'Præpositus et scholares Aulae Reginae de Oxon' incorporated.*

Since 1330 Edward had depended chiefly on the two Strat-

annually at the Exchequer; viii. As to the number of escheators, by whom they shall be chosen, and their tenure of office; and who may be chosen coroners; ix. As to hundreds and wapentakes, the sheriffs holding or letting to farm the same, and their bailiffs; x. That "sheriffs shall have the keeping of the gaols;" xi. Of clerks to receive recognizances according to the statute merchant; xii. Of "one measure and one weight throughout England;" xiii. Of a return by the escheator in some cases "by a good and true extent in the chancery;" and how "by accord, betwixt the chancellor and treasurer," there may be a commission; xiv. Of the proceedings on petition for land in the king's hands; xv. Against "pardon for felony inconsistent with the king's oath;" xvi. Of granting *nisi prius* and giving judgment; xvii. Of writs of *jurisutrum*; xviii. That "demandant may aver the death of the vouchee;" xix. Of purveyance; xx. Of subsidies of the ninth and fifteenth; xxi. Of subsidy on wool, woolfells and other merchandize. According to ch. x is Cotton's Abr., p. 45, No. 43. As to ch. xx, there is further

provision in 15 Edw. III, by statute the third, pp. 297, 298.

<sup>280</sup> Edi. 1870, p. 158 to 165.

<sup>281</sup> Statute the second, in ch. 1, recites grants of the ninth and fifteenth, and provides that they "shall not another time be had in example." Ch. ii, provides "safe conduct, &c., for alien merchants." Ch. iii, is as to "pardons of chattels of felons," &c. Ch. iv, is as to "The custom upon wool and leather after the expiration of the subsidy." 1 Stat. of the Realm, p. 289 to 292.

Statute the third is, that "the realm and people of England never shall be subject to the kings of England as kings of France." *Id.*, p. 292.

Statute the fourth embraces ch. 1, as to "purveyance of the goods of spiritual persons;" ch. 2, of "presentment to churches made by the king in another's right;" ch. 4, that "escheators, &c., shall keep temporalities without doing waste;" ch. 5, as to "chancellor, treasurer, and others of the council, empowered to let the temporalities of bishops," &c.

<sup>282</sup> 3 Stat. of the Realm, p. 371.

fords.<sup>238</sup> After 1337 when *Henry de Burghersh* was superseded as treasurer, *John Stratford*, as archbishop, chancellor, and president of the royal council, was supreme in the treasury, as well as in the chancery. In 1340, John had taken the chancellorship for the third time (April 28); but in two months (June 28) he resigned it and his brother Robert became chancellor for the second time. In the same summer Robert accompanied the king to France, and John was left as President of the council.<sup>234</sup>

"Both brothers were honest, if not brilliant administrators; they had risen from a comparatively humble rank, and in the struggles in which they had taken so active a part, had made enemies.<sup>235</sup> Edward's difficulties in obtaining money, his lack of success in the war" (with France) "and probably" the archbishop's "opposition to its continuance, gave" his "rivals their opportunity." "Prompted by" them "Edward who had been obliged by want of supplies to retire from the siege of Tournay, returned hastily to England, unexpectedly landed at the Tower on the 30th of November, and on the following day removed from office the chancellor<sup>236</sup> and the treasurer, bishop *Northburgh*<sup>237</sup> of Lichfield. The judicial body fared worse; *Richard Willoughby*, who had until lately been the chief justice of the Bench,<sup>238</sup>

<sup>233</sup> John who, while bishop of Winchester, drew the charges against Edward II, and who, in 1333, became archbishop of Canterbury, and Robert, his brother, and archdeacon, who became, in 1337, bishop of Chichester. 2 Stubbs's *Const. Hist.*, ch. 16, pp. 383, 384.

<sup>234</sup> Foss's *Biogr. Jurid.*; 2 Stubbs's *Const. Hist.*, ch. 16, p. 384. In the proceedings of the parliament, of 14 Edw. III, is this: "The duke of Cornwall shall be keeper of England in the king's absence, and the archbishop of Canterbury and the earl of Huntingdon to be chief councillors of the realm. The bishop of Lincoln shall go to the king to be his councillor." Cotton's *Abr.*, pp. 55, 56. <sup>235</sup> *Id.*

<sup>236</sup> 2 Stubbs's *Const. Hist.*, ch. 16, § 258, p. 385. Mr. Foss, after mentioning that he accompanied the king to France, says he "was with him before Tournay. When he quitted the camp he left enemies behind him, who whispered in the king's ear that his dis-

appointment in receiving supplies was attributable to his ministers at home. The king was too easily persuaded, and making a hurried journey, arrived at the Tower of London in the middle of the night on November 30, and the next morning not only took the Great Seal away from the bishop, but threatened him with imprisonment, being only prevented from carrying his intentions into execution by the clementine prohibition against such an indignity on ecclesiastics of that rank." *Biogr. Jurid.*

<sup>237</sup> Mentioned in § 19, p. 563. He died in 1359, and is commemorated among the chancellors and benefactors of Cambridge." *Id.*

<sup>238</sup> Mr. Foss, after mentioning that *Geoffery le Scrope* resigned the office of chief justice of the king's bench 'in the middle of 1338,' says: "From this time there is no doubt that *Wilughby* presided in the court until he was displaced, on July 24, 1340; and, on the 9th of October following, he was restored to the Common Pleas." Then

*John Stonor* chief justice of the Common Pleas,<sup>239</sup> and *William Sharesnull* a judge of the same court,<sup>240</sup> together with the chief clerks of the chancery,<sup>241</sup> and some of the most eminent merchants, *William*<sup>242</sup> and *Richard de la Pole* and with them the lord *Wake*, were arrested and imprisoned. The archbishop, who was at Charing, hearing of the arrest of the judges, betook himself to his palace at Canterbury as to a sanctuary."<sup>243</sup>

Mr. Foss cites *Stephen Birchington* (Angl. Sac. i, 21) as saying that he was one of the judges who were arrested by the king on his hasty return to England at the end of November, 1340." Biogr. Jurid.

<sup>239</sup> Mr. Foss agrees (citing Barnes's Edw. III, 273,) and states that *Roger Hillary* was constituted his successor, but that *Stonore* was restored to his place of chief justice of the Common Pleas, May 9, 1342. Biogr. Jurid.

<sup>240</sup> In no very long time he recovered the royal favour, being reinstated May 10, 1342. *Id.*

<sup>241</sup> *Michael de Wath* (mentioned in § 17, p. 560,) was one of those cast in prison for mal-administration. *John de Stratford*, archbishop of Canterbury, remonstrated against this clergyman's imprisonment and procured his release. So late as 1347, he (*Michael de Wath*) is named as one of the commissioners to enquire as to complaints of inhabitants of Frismerk, in Yorkshire. *Id.*

*John de St. Paul*, master of the Rolls (mentioned in § 17, p. 560,) being a clergyman, obtained through Archbishop Stratford's intervention a release from prison; though not restored to the mastership of the Rolls, *St. Paul* was, after awhile, allowed to resume his old position among the masters in chancery. *Id.*

<sup>242</sup> 2 Stubbs, p. 385. *William de la Pole*, who in 1339 and the early part of 1340 was on the Exchequer bench, is mentioned in § 13, p. 556. In the proceedings of the parliament in 14 E. III may be seen the following: "Sir *William de la Pool* appointed to pay to the King before Michaelmas, three hundred

marks beyond the sea, so as he might have his competent of wool, or else the first ninths granted in Suffolk." Cotton's Abr., p. 29. Mr. Foss, speaking of his sufferings from the king's indignities says: "He was imprisoned, and all his estates were taken into the king's hands. The particular charge against him arose from a commission which he had received as to the purchase and sale of wools for the king's use (N. Fœdera ii, 988). A judgment was given against him in the Exchequer, but the whole process was annulled in the parliament of July 1344 (Rot. Parl. ii, 154). He lived for more than twenty years afterwards, highly in the king's favour. The remainder of his life is principally illustrated by his founding and liberally endowing an hospital at Kingston-upon-Hull, which in the last year of his life he obtained a license to convert into a religious house of nuns, of the order of St. Clare (Abb. Rot. Orig. ii, 286). He died on April 21, 1366." Biogr. Jurid.

<sup>243</sup> 2 Stubbs, p. 385. Mr. Foss speaking of the king's "coming suddenly to England on November 30, 1340," says, "he removed the chancellor, confined some of the judges and *hastily sent for the archbishop*. The primate, however, thought it prudent to escape to Canterbury, and to refuse to answer except before his peers." Biogr. Jurid. The controversy is curious. See 1 Cotton's Abr., 31 to 35; 1 State Tr., 57 to 65; 1 Campbell's Lives of the Chancellors, ch. 14, p. 238 to 244 of 2d ed. (1846), p. 225 to 230 of Boston ed. 1874; 2 Stubbs's Const. Hist., ch. 16, p. 385 to 391.

The name of the corporation under a patent granted 18th Jan., in 14 Edw. III, is "*Præpositus et Scholares Aulæ Reginæ de Oxon.*" King E. III, in his charter, called the said Hall a college, as in truth it is."<sup>244</sup>

23. *Robert de Bourchier (or Bousser) made chancellor Dec. 14, 1340. Thomas de Evesham Master of the Rolls from Dec. 10, 1340, till Feb. 27, 1341, when John de Thoresby (or Thursby) was appointed. How far Thomas de Evesham; Edmund de Grymesby, Thomas de Brayton (or Drayton) and Thomas de Pardeshowe were entrusted with the Great Seal. Robert de Bourchier ceased to be chancellor in October, 1341. Robert Parning, who had filled successively the offices of justice of the Common Pleas, Chief Justice of the King's Bench and Treasurer of England, was made Lord Chancellor Octo. 27, 1341, and continued in the office till his death, in August 1343. During part of this time the King was on the continent, and his son regent. Who did the duties of the Great Seal during Parning's illness and until Sep. 29, 1343. Then Robert de Sadington made chancellor.*

The king, having resolved to appoint a lay chancellor, selected *Robert de Bourchier (or Bousser)*;<sup>245</sup> he was sworn in on Dec. 14, 1340, and had a grant of £500 a year beyond the accustomed fees.<sup>246</sup>

*Thomas de Evesham*,<sup>247</sup> *Edmund de Grymesby*<sup>248</sup> and *Thomas de*

<sup>244</sup> Dr. Ayray's case, 11 Rep. 18 b.

<sup>245</sup> Eldest son of *John de Bourchier*, or Bousser, (mentioned in § 2, p. 530). Robert began his career in 17 Edw. II, as a man-at-arms, and was returned in that character by the sheriffs of Essex, as summoned to attend by general proclamation (Parl. Writs ii, p. 1, 652); in 2 Edward III, before his father's death, he was one of the knights returned to parliament for that county, and received for his attendance at the rate of four shillings a day (Rot. Parl. ii, 441). In July 1334, he was appointed chief justice of the King's Bench in Ireland (N. Foedera ii, 390). At the commencement of Edward's claim to the crown of France he was engaged in 1337

in the battle of Cadsant, where Guy, the brother of the earl of Flanders was taken prisoner; next he appears at the Parliament in Lent, 1340 (Rot. Parl. ii, 113).

<sup>246</sup> *Id.*

<sup>247</sup> He held some place in one of the departments of the court as early as 1313 (6 Edw. II), when he accompanied the king abroad; was in 1319 one of the attorneys for Rigand de Asseno, the pope's nuncio (N. Foedera ii, 212, 399), and appeared as privy for the abbot of Evesham in the parliaments of 16 and 18 Edw. II. Foss's Biogr. Jurid.

<sup>248</sup> Of the town of that name in Lincolnshire, where he had considerable property. He was probably son of Simon de Grymesby, escheator to the

*Brayton* (or *Drayton*),<sup>249</sup> were clerks in the chancery.<sup>250</sup> On the appointment of Sir Robert Bouchier as chancellor, the Great Seal was placed in the hands of *Thomas de Evesham*, under the seals of two of the other clerks, and so remained from December 16, 1340, to the 1st of January following. On the 10th of that month he was raised to the office of Master of the Rolls.<sup>251</sup>

*Edmund de Grymesby* was one of the two clerks under whose seals the Great Seal was placed from Dec. 16, 1340, to the end of the year.<sup>252</sup> *Thomas de Brayton* (or *Drayton*), "from 14 to 27 Edw. III," "was frequently one of those entrusted with the custody of the Great Seal."<sup>253</sup>

When Sir *Robert Bouchier*, the chancellor, left London, on Feb.

king; and is mentioned as one of the procurators to appear for the abbot of Thornton in the parliaments of 17 and 18 Edw. II. In the next year he was parson of the church of Preston. In 7 Edward III (1338) he was appointed keeper of the rolls in the Irish chancery. Two years afterwards he was sent to England to obtain loans for the king to carry on the war with Scotland. *Id.*

<sup>249</sup> Had a grant of the prebend of Fynglas in the church of Glasgow in 13 Edw. II. He accompanied the King to France in 3 Edward III, and was engaged in missions of trust, in several of the following years. *Id.*

<sup>250</sup> As such, *Thomas de Evesham* is mentioned in July 1328 (2 Edw. III). *Id.* Mr. Foss after speaking of Edmund de Grymesby in 7 Edw. III, says in connection with his missions "two years afterwards," he was "no doubt then a master or clerk in the English chancery, in which office he continued to act till the 25th, and perhaps the 27th year of the reign, being a receiver of petitions in all the parliaments assembled in that interval." *Id.* Of *Thomas de Brayton* (or *Drayton*) it is said "his appointment as a clerk in the chancery, it would appear, occurred about 6 Edw.

III, as in the parliament of that year he was a receiver of the petitions." *Id.*

<sup>251</sup> But it would seem that this was a mere temporary appointment, for he was superseded by *John de Thoresby* on Feb. 21, after being only six weeks in the place. He immediately resumed his duties as a clerk in the chancery (*N. Fœdera* ii, 745, 1172,) which he continued to perform during the remainder of his life. He died in 1343, possessed of land at Weston Underedge, in Gloucestershire. His London residence was in 'Faytour Lane.' Foss's Biogr. Jurid.

<sup>252</sup> And from Sept. 2 to Octo. 8, 1351. *Id.*

<sup>253</sup> Either during absence of the chancellors, or in intervals of vacancy in the office from 1340 to 1353. He continued to act as a clerk of the chancery till 33 Edw. III. *Id.*

Sir *Thomas Drayton* was clerk of the parliament in 14 Edw. III, 15 Edw. III, 17 Edw. III, 18 Edw. III, and 20 Edw. III. Cotton's Abr., pp. 22, 31, 36, 43, 46. Mr. Foss suggests that he may have been connected with a Norfolk family, having possessions in Great Yarmouth. Biogr. Jurid.

14, 1341, *Thomas de Pardeshowe* (called a clerk in the chancery) had the custody of the Great Seal, under the seals of Thomas de Evesham, the Master of the Rolls, and Thomas de Brayton. From the terms of the record, Mr. Foss considers "that the two latter only were appointed to execute the functions of the office, which they did till" the chancellor's "return, on March 3."<sup>254</sup>

In 1341 on Feb. 21, *John de Thoresby* (or Thursby<sup>255</sup>) was appointed Master of the Rolls.<sup>256</sup>

It has been supposed that the appointment of *Robert de Bourchier* (or Bousser) as chancellor was "very distasteful to all parties."<sup>257</sup> However this may be, it is certain that the king parted with him as chancellor, in October 1341.<sup>258</sup>

"*Robert Parning*"<sup>259</sup> took the state and degree of a serjeant in law in 3 E. III, and became the king's serjeant, and for his profound and excellent knowledge of the laws,<sup>260</sup> in Trin. Term 14 E. III, was 24

<sup>254</sup> *Id.*

<sup>255</sup> Born at a manor of that name in Wenleydale, in Yorkshire, which had been long in the family; second son of Hugh de Thoresby, who was lord of it in 9 Edw. II. He greatly distinguished himself while at Oxford by his attainments in the study of divinity, taking a high degree 'in both laws.' So early as 1 Edw. III, he was the last named in a mission to the pope to procure the canonization of Thomas, duke of Lancaster. Then he probably was a clerk in the chancery, where he continued to act for several years. Having, in 10 Edw. III, been served in open court with a monition to appear before the pope on an appeal, the papal messengers were committed to prison as guilty of contempt, and were only released by the intercession of Queen Philippa. (Prynne on 4th Inst.) This, however, did not prevent his being sent to the pope, four years afterwards, to obtain a dispensation for the marriage of Hugh le Despenser with the daughter of the earl of Salisbury. Foss's Biogr. Jurid.

<sup>256</sup> *Id.*

<sup>257</sup> Mr. Foss thinks this is evident "from the petitions in the next parliament, praying that in consequence of the evils arising from bad counsellors, the king should, in future, make the chancellor, chief justices, and other officers in full parliament, and that they should there be openly sworn to observe the laws." Biogr. Jurid.

<sup>258</sup> Then Bourchier joined the king's army with so large an array that his allowance amounted to £401 10s. He distinguished himself at the battle of Cressi, and was engaged as one of the ambassadors to treat for the subsequent peace. He was summoned to parliament as a peer from 16 Edw. III. Falling a sacrifice to the plague that raged in 1349, he was buried in Halsted church, where his monument remains. *Id.*

<sup>259</sup> Mentioned in § 15, p. 558.

<sup>260</sup> 2 Inst., 79. Was made a justice of the Common Pleas, May 23, 1340, Foss's Biogr. Jurid.



*Julii*, by writ, created chief justice of England; in which office he remained until the 15th of December following; on which day he was made lord treasurer of England.<sup>261</sup> In that office he remained until the 15th year of the same king (Oct. 27, 1341) and then was constituted lord chancellor."<sup>262</sup>

From October 4, 1342, to March 2, 1343, the king was absent from England on a visit to Brittany, and his son Edward was regent.<sup>263</sup>

Parning's attending the Common Pleas and hearing matters of law debated is mentioned by Lord *Coke* in more than one place.<sup>264</sup> He tells us

"Sir *Robert Parning* that was Lord chancellor in 14 E. III, and had been chief justice of the common pleas, would, in the term time come and sit in the court of common pleas to hear matters in law debated and resolved, when he was lord chancellor, and speak to them himself."<sup>265</sup>

Sir *Robert Parning* continued chancellor till his death<sup>266</sup> in 1343.<sup>267</sup>

*John de Thoresby*, or Thursby, did the duties of the Great Seal in 1343 during the illness of Chancellor Parning until his death. On that event there was a commission to him and *John de St. Paul* (mentioned in § 17, p. 560) and *Thomas de Brayton*, or Drayton (mentioned in this section on p. 571), "*que vous recevez notre Grant Seal en la presence de notre conseil a Londres et facey reo que a l'office du dit Seal appeint come gardeins dicel tanque nous eut eoms autremont*

<sup>261</sup> The king, probably, having as high an opinion of his integrity as of his legal attainments. *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> 2 Stubbs's Const. Hist., ch. 16, p. 392, note 1.

<sup>264</sup> "This man, knowing that he that knew not the common law, could never well judge in equity (which is a just correction of law in some cases), did usually sit in the court of common pleas (which court is the lock and key of the common law), and heard matters in law there debated, and many times would argue himself, as in the report of 17 E. III it appears." 2 Inst., 79.

<sup>265</sup> Lord *Coke* specifies Hil., 17 E. III, 14 b, and Trin., 17 E. III, 37 b; and states that, "in both these terms, Sir *John de Stonore*, Knight, was chief justice of the court of common pleas." 2 Inst., 562.

<sup>266</sup> He left by his wife Isabella, a son named Adam, who succeeded to eight manors and other property in the counties of Cumberland and Northumberland. Foss's Biogr. Jurid.

<sup>267</sup> In saying that 'he died on August 26, 1348,' there is as to the figure 8 either a mistake by the author or a misprint in Foss's Biogr. Jurid., p. 502, of Boston edi. 1870.

*ordeinez."* They acted under this commission from its date, the 26th day of August,<sup>268</sup> until September 29, 1343.<sup>269</sup>

On that day, the Great Seal was delivered to *Robert de Sadington* (mentioned in § 13, p. 555) as chancellor.

24. *Additional appointments to the Exchequer Bench between December, 1340, and May, 1350.*

1341, Jan. 20 (14 Edw. III), *Thomas de Blaston* (mentioned in § 7, p. 543), received a new patent.

1341, Jan. 20 (14 Edw. III), *Gervase de Wilford*,<sup>270</sup> made a baron.

1341, Jan. 20 (14 Edw. III), *William de Broclesby*,<sup>271</sup> made a baron.

1341, Jan. 20 (14 Edw. III), *William de Stowe*,<sup>272</sup> made a baron.

1344, July 2 *William de Shareshull*, raised<sup>273</sup> to the office of Chief Baron.<sup>274</sup>

1345, November 10, *John de Stouford* (or Stonford), raised<sup>275</sup> to the office of Chief Baron.<sup>276</sup>

<sup>268</sup> 1 Campbell's Lives of the Chancellors, ch. 14, p. 248, note, 2d ed. (1846), p. 233 of Boston ed. 1874.

<sup>269</sup> John de St. Paul was made archdeacon of Cornwall in 1346, and archbishop of Dublin about October 1349. He presided there for thirteen years and died in 1362. Foss's Biogr. Jurid.

<sup>270</sup> Of a family which possessed the manors of Clifton and Wilford in Nottinghamshire; one branch of which used the name of Clifton and the other that of Wilford. Gervase was of the latter; he had been remembrancer when he was made baron. He was instituted to the living of Barnach in Northamptonshire; and in 18 Edw. III assigned various lands in Norfolk to the prior and convent of Shouldham in the latter county. Foss's Biogr. Jurid.

<sup>271</sup> Of that place in Lincolnshire; an ecclesiastic who devoted to pious purposes much of his property in that county and in Yorkshire. He was re-

membrancer in 1338 and held the office till he was made baron. He was alive in 25 Edw. III. *Id.*

<sup>272</sup> A witness to the release executed in 1327 to King Edw. III by the widow of Aylmer, late earl of Pembroke. He was in the court till 20 Edw. III, being then among the judges from whom loans were required; but he is not in the list of those for whom in the next year robes were ordered. He was parson of the church of Sabrithe'sworth; and was alive in 26 Edw. III, when he endowed that church with a house in the parish. *Id.*

<sup>273</sup> From the Common Pleas. Foss's Biogr. Jurid.

<sup>274</sup> After being in this court about 16 months, he was on Nov. 10, 1345, removed to the Common Pleas. *Id.*

<sup>275</sup> From the Common Pleas. *Id.*

<sup>276</sup> Superseded on Dec. 8 by *Robert de Sadington*, and reinstated in the Common Pleas. *Id.*

1345, December 8, *Robert de Sadington*, reinstated as Chief Baron.<sup>277</sup>

1346, July 2, *Alan de Ashe*,<sup>278</sup> made a baron.<sup>279</sup>

1347, March 8, *John de Houghton*<sup>280</sup> (or Houton), made a baron.

1350, April 7 (24 Edw. III) *Gervase de Wilford* became chief baron.<sup>281</sup>

1350, April 16 (24 Edw. III), *James Huse*, made a baron.<sup>282</sup>

25. *Additional appointments to the King's Bench between December, 1340, and May, 1350.*

1341, January 8, *William Scott* (mentioned in § 15, p. 557), promoted to the chief justiceship.<sup>283</sup>

1341, January 8, *Robert de Scardeburgh* (mentioned in § 14, p. 556), resumed his seat.<sup>284</sup>

1341, October 28, *William Basset*, removed into this court.<sup>285</sup>

<sup>277</sup> His reinstatement as Chief Baron, seems to Mr. Foss to exclude Lord *Campbell's* idea that he was inefficient as a judge. In the next year he was appointed one of the custodes of the principality of Wales, the duchy of Cornwall, and the earldom of Chester, during the minority of the king's son, Edward, prince of Wales. In 1347 he was at the head of the commission assigned 'ad iudicium ferendum'—that is, to sentence and execute the earls of Menteith and Fife, taken with King David in the battle of Nevil's cross. The death of *Robert de Sadington* was probably in the first quarter of 1350. In that year, on April 7, his successor as chief baron was appointed. *Id.*

<sup>278</sup> An advocate in the early part of this reign. *Id.*

<sup>279</sup> He had his robes in 21 Edw. III. *Id.*

<sup>280</sup> Connected in early life with the Exchequer. In 19 Edw. II, he accompanied the king to France in that character, and was parson of the church of Postwick, a parish in Norfolk. In that county he had the manor of Wor-

megay and considerable property. In 1 Edw. III, he was clerk of the keeper of the wardrobe, and, in 12 Edw. III, he was advanced to be a chamberlain of the Exchequer. Foss's Biogr. Jurid.

<sup>281</sup> In 1359 he obtained the bishop of Lincoln's license, '*alere et fovere pueros sub virga magistri in lectura, cantu, et grammatica facultate, ad augmentum cultus divini in sua parochia, et eosdem informare, clericis post pestem diminutis.*' He presided in the court till 1361. The entry on the roll states that he was exonerated, being broken down by age. *Id.*

<sup>282</sup> In 34 Edw. III, employed as a commissioner to treat with the people of the counties of Somerset, Dorset, Wilts, Devon and Cornwall, as to raising forces for defence of the kingdom. *Id.*

<sup>283</sup> He held this office at his death in 20 Edw. III (1346). Foss's Biogr. Jurid.

<sup>284</sup> He retained it for nearly four years. Then (in 1344) he was restored to his former position of chief justice of the Common Pleas in Ireland. *Id.*

<sup>285</sup> Where he remained till 24 Edw. III. *Id.*

1342, January 10, *Adam de Steyngrave*, removed into this court.<sup>286</sup>

1342, April 12, *William de Thorpe*,<sup>287</sup> raised to the bench.<sup>283</sup>

1346, November 20, *William de Thorpe* became Chief Justice.<sup>289</sup>

26. *Additional appointments to the Common Pleas between December, 1340, and May, 1350.*

1341, January 8, (14 Edw. III), *Roger Hillary* (mentioned in § 15, p. 557), advanced to the chief justiceship.

1341, January 8, *William Basset*, embraced in new patent.

1341, January 8, *Thomas de Heppecotes*,<sup>290</sup> one of those appointed to supply place of judges removed.<sup>291</sup>

1341, May 30, *Richard de Kelleskull*.<sup>292</sup>

1341, October 28, *Adam de Steyngrave* (mentioned in § 7, p. 543), made a judge of this court.<sup>293</sup>

1341, October 28, *William Basset* removed from this court.<sup>294</sup>

1342, April 23, *John de Stouford*<sup>295</sup> (sometimes spelled *Stonford*),

<sup>286</sup> He was in 14 Edw. III one of the commissioners to enquire into the value of bishoprics north of Trent. His death or removal must have been before April 1347, as he is not included in the order then issued for the judges' robes. *Id.*

<sup>287</sup> In 7 Edw. III an advocate; in 15 Edw. III one of the king's serjeants; in the next year called the king's attorney. *Id.*

<sup>288</sup> The words used are '*unus justiciariorum ad placita in banco*'; they are not deemed by Mr. Foss sufficient to authorize his insertion among the justices of the *Common Pleas*. *Id.*

<sup>289</sup> In this character he opened the parliaments of the two following years. Foss's Biogr. Jurid.

<sup>290</sup> Probably a native of Northumberland where there is a hamlet called Hepscott in Morpeth parish. Foss's Biogr. Jurid.

<sup>291</sup> He died before the end of the year. *Id.*

<sup>292</sup> Supposed to be of a family from Kelsull in Hertfordshire. In 15 Edw. II there was a pardon to Gilbert de Kelleskull for felonies, &c., committed in the 'pursuit' of the Despensers. That Gilbert, it is thought, was probably father of Richard who was appointed to several judicial commissions from 9 Edw. II. The date of the last fine before him is 1354; but he was living three years afterwards. *Id.*

<sup>293</sup> 1342, Jan. 10, removed to the King's Bench. *Id.*

<sup>294</sup> To the King's Bench. *Id.*

<sup>295</sup> Born (it is said) about 1290 at Stouford, in the parish of West Doun. Mr. Foss observes, that "a John de Stouford was a manucaptor in 1307 for a burgess returned to parliament for Plympton (Parl. Writs ii, 5), in the neighbourhood of his native place;" that probably he was father of the judge; and that the John de Stouford, who, in 14 Edw. III, was one of the custodes of

raised to this bench.<sup>296</sup>

1342, May 9, *John de Stonore* restored to the chief justiceship.<sup>297</sup>

1342, *Roger Hillary* (having made way for John de Stonore) received (June 4) a new patent as judge.<sup>298</sup>

1342, May 10, *William de Sharesnull* reinstated.<sup>299</sup>

1342, May 16, *John de Shardelowe*<sup>300</sup> reinstated.

1343, (17 Edw. III) *Richard de Wilughby* had a new patent.<sup>301</sup>

1345, November 10, *William de Sharesnull* removed<sup>302</sup> to this bench, with the title of *second justice*.<sup>303</sup>

1345, November 10, *John de Stouford* (or Stonford) placed for about a month in a higher office.<sup>304</sup>

the '*terra maritima*' of Devon (*N. Federa* ii, 1112)—and the John de Stouford, who, in that year, was made one of the king's serjeants at law—was the judge himself. Foss's Biogr. Jurid.

<sup>296</sup> Where he remained till Nov. 10, 1345. *Id.*

<sup>297</sup> "And remained undisturbed in it till 1354, when he died, leaving large possessions in nine counties, to which his son, also named John, succeeded." *Id.*

<sup>298</sup> *Id.*

<sup>299</sup> 1344, July 2, raised to the office of chief baron. *Id.*

<sup>300</sup> He was a trier of petitions in parliament next year, and died in 18 Edw. III, leaving two sons, John and Thomas, the latter of whom is taken to have been attorney-general in 40 Edw. III. The family flourished in Norfolk till 11 Hen. VI (1433). *Id.*

<sup>301</sup> From 17 Edw. III, fines were levied before him till Trin. 31 Edw. III, when he probably retired from the bench, though he lived till 36 Edw. III. He died possessed of extensive estates in the counties of Nottingham, Derby, Lincoln, &c., besides a great house situate in 'le Baly,' in London. Foss's Biogr. Jurid.

<sup>302</sup> From the Exchequer. *Id.*

<sup>303</sup> Which he retained for about five years. He was appointed one of the custodes of the principality of Wales, &c., during the minority of the king's son. *Id.*

<sup>304</sup> That of Chief Baron of the Exchequer; being superseded on December 8 by Robert de Sadington. Mr. Foss says: "This was no doubt a temporary arrangement for the accommodation of the latter, who had lately been removed from the office of chancellor; as John de Stouford certainly resumed his place in the Common Pleas; fines acknowledged before him from that time till midsummer 1372, 33 Edw. III, being still extant. There is no evidence of his living after the latter date, and his death is stated to have occurred at his house of Stouford, his remains being buried in the church of West Doun. There are several entries of grants made by him for pious uses; and he is reported to have built the bridge over the Taw, near Barnstaple, besides another between that town and Pilton, in consequence of finding a poor woman and her child drowned in the neighborhood." *Id.*

1348, January 14, *Thomas de Fencotes*<sup>305</sup> made a judge of this court.<sup>306</sup>

27. *Of the parliament of 15 Edw. III (1341); and the proceedings as to John de Stratford, who had been chancellor and was yet Archbishop of Canterbury and a peer. Of the statute of 15 Edw. I; and the instrument that the king, within a few months after it, executed with intent to revoke it. How, as he said, he 'dissimuled in the premises.'*

In the parliament of 15 Edw. III (1341) there were, according to Cotton's Abr., "articles of the commons" (*Id.* pp. 31, 32, No. 9 to 17) and the King's answers (*Id.* pp. 33, 34, No. 35 to 42), "articles of the clergy" (*Id.* pp. 32, 33, No. 18 to 26) and the King's answers (*Id.* p. 33, No. 27 to 33) with his answer (*Id.* p. 33, No. 34, 35) to demands of the Lords. Prominent was the controversy (alluded to in § 22, p. 569, *n.*) between the King and *John de Stratford* who had been chancellor of England and was yet Archbishop of Canterbury, and as such a peer of the realm.

"The parliament was continued from day to day on this point that the Nobles of this land should not be put to answer but in open parliament by their peers; whereupon are named four bishops, four earls and four barons to draw the plot."<sup>307</sup>

This committee of twelve reported

"That on no account should peers, whether ministers or not, be brought to trial, lose their possessions, be arrested, imprisoned, out-

<sup>305</sup> Of a Yorkshire family. In the reign of Edward II he was an adherent of Thomas, earl of Lancaster; and was released from prison on payment of £20. He was one of the attorneys in England of John de Britannia, earl of Richmond when taken by the Scots in 16 Edw. II. He acted as an advocate in Yorkshire so early as 2 Edw. III; represented the earl of Richmond before his death in 8 Edw. III; was custos of the estate till the death of the earl's successor, John, duke of Brittany, in 15 Edw. III; and a justice of assize in 17

Edw. III. Foss's Biogr. Jurid.

<sup>306</sup> About the time that he was raised to the bench he received the order of knighthood. In 24 Edw. III he gave certain tenements to the priory of the order of Mary of Mount Carmel, to enlarge their house in Fleet street. He seems to have resigned his judicial office about 1354. In 31 Edw. III he and his wife Beatrice endowed the convent of Egleston with the advowson of the church of Bentham in Yorkshire. *Id.*

<sup>307</sup> Cotton's Abr., p. 31, No. 6; 1 State Tr. 57 to 65.

lawed or forfeited, or be bound to answer or judged, except in full parliament and before their peers."<sup>308</sup>

A formal reconciliation followed.

"On the nineteenth of April, being Thursday, the King came into Saint Edward's chamber, commonly called *the Painted Chamber*,<sup>309</sup> before whom, in sight of the Lords and Commons, the archbishop humbled himself and required his gracious pardon; which upon the whole parliament's general suit and entreaty, his majesty granted. After which the Archbishop desired that whereas he was publicly defamed through the realm he might now be arraigned in open parliament before his peers: but the King answered he would first attend to the Common affairs, and after that examine lighter matters."<sup>310</sup>

Among the articles agreed upon is the subjoined.<sup>311</sup> Mr. Stubb's observes:

"Stratford had not only won a personal victory, but the peers, acting at his instigation, had secured for their order a real privilege, which the events of the last reign and of the early years of the present had shewn to be necessary."<sup>312</sup>

What was made a condition of the grant to the King and was accorded in his answers, had to be turned into a statute; that statute he permitted to be sealed.<sup>313</sup>

<sup>308</sup> This language is in 2 Const. Hist., ch. 16, p. 389; Mr. Stubbs citing therefor Rot. Parl. ii, 127. It seems consistent with Cotton's Abr., p. 31, No. 7.

<sup>309</sup> In 1800, "on the removal of the old tapestry with which the walls were hung, *paintings* containing a multitude of large figures, and representing battles, were discovered on these walls." It is observed that they were "certainly as old as 1322, and probably older; for in the manuscript itinerary of Simon Simeon, and Hugo, the Illuminator, dated in that year, and now existing in the library of Bennet College, Cambridge, a passage occurs (quoted by Gray in a letter to Horace Walpole in 1768)," which (according to the translation) mentions "that most famous palace of the king in which is the well-known chamber, on whose walls all the history of the wars of the whole Bible are exquisitely painted, with most complete and perfect

inscriptions in French." Penny Magazine for 1834, Nov. 29, p. 458.

<sup>310</sup> This which is from 1 State Tr. 65, seems consistent with Cotton's Abr., p. 31, No. 8, except perhaps as to the day. That may have been not April 19, but May 7, as stated in 2 Const. Hist., ch. 16, p. 389, where Mr. Stubbs cites Birchington, p. 40, and Rot. Parl. ii, 127.

<sup>311</sup> "It is to be remembered that all things touching the arraignment of the archbishop of Canterbury do remain with Sir William of Keldesbye, keeper of the Privy Seal." As to him see 2 Stubbs's Const. Hist., ch. 16, note 1.

<sup>312</sup> *Id.*, p. 389; Green's Hist. of Engl. Peop., book 4, ch. 2, vol. 1, p. 414.

<sup>313</sup> It is in 1 Stat. of the Realm, p. 295. In Cotton's Abr., p. 34, No. 43, is as follows: "At the request of the whole estate these articles were statutes, as on the back of the roll doth appear; the which statutes with the conditions

But within a few months after it, the King with intent to revoke it, executed the following instrument:

"Edward by the Grace of God, &c., to the sheriff of Lincoln, greeting: Whereas, at our parliament summoned at Westminster in the Quinzine of Easter last past, certain articles expressly contrary to the laws and customs of our realm of England, and to our prerogatives and rights royal were pretended to be granted by us by the manner of a statute; We, considering how that by the bond of our oath we be tied to the observance and defence of such laws, customs, rights and prerogatives, and providently willing to revoke such things to their own state which be so improvidently done, upon conference and treatise thereupon had with the earls, barons and other wise men of our said realm, and because we never consented to the making of the said statute, but as then it behoved us, we *dissimuled* in the premises by protestations of revocation of the said statute, if indeed it should proceed, to eschew the dangers which, by the denying of the same, we feared to come, forasmuch as the said parliament otherwise had been, without dispatching anything in discord dissolved, and so our earnest business had likely been ruined which God prohibit, and the said pretended statute we permitted then to be sealed: It seemed to the said earls, barons and other wise men that sithence the said statute did not, of our free will proceed, the same be void and ought not to have the name nor strength of a statute; and therefore, by their counsel and assent, we have decreed the said statute to be void and the same inasmuch as it proceeded of dread, we have agreed to be annulled; willing, nevertheless, that the articles contained in the said pretended statute, which, by other of our statutes, or of our progenitors, kings of England, have been approved, shall according to the form of the said statute, in every point, as convenient so be observed; and the same we do, only to the conservation and reintegration of the rights of our crown, as we be bound, and not that we should in any wise grieve or oppress our subjects, whom we desire to rule by lenity and goodness. And therefore we do command this that all those things thou cause to be openly proclaimed in such places within thy bailiwick where thou shalt see expedient. Witness myself at Westminster the first day of October, the fifteenth year of our reign."

"By the King himself and his council."<sup>314</sup>

were after read before the king, the chancellor, treasurer, justices of both benches, steward of the king's chamber, and others, all who were sworn upon the cross of Canterbury to perform the same; only the chancellor, treasurer, and certain of the justices refused the same oath as repugnant to their former oath and laws of the realm; the which statutes and conditions, together with the commis-

sions for the enquiry of oppressions, were exemplified under the Great Seal and delivered to the Lords and Commons."

<sup>314</sup> 1 Stat. of the Realm, 297; Green's Hist. of Engl. Peop., book 4, ch. 2, p. 415, of vol. 1. There were no doubt like writs to other sheriffs, besides him of Lincoln. In the same year (15 Edw. III) is a case in Fitzherb. Abr. under tit. *Petition*.



28. *Of the parliament of 17 Edw. III (1343). Where its two houses sat. Of its acts as to justices; and children born beyond the seas. How the proceedings against John de Stratford were disposed of; and the statute of 15 Edw. III repealed. The King's eldest son made Prince of Wales.*

Parliament was "holden at Westminster in the Quindena of Easter," in 17 Edw. III (April 28, 1343). The king came into Saint Edward's chamber, commonly called the *Chamber de Pinct*,<sup>815</sup> accompanied with sundry Bishops and Lords." Next day "the king came as before."

"The Wednesday being the last of April, the chancellor,<sup>816</sup> in the presence of the King and Lords, declareth the cause of the parliament."<sup>817</sup>

"The first day of May, the Lords *by themselves*, and the Commons *likewise*, made answer."<sup>818</sup> One account is, that "after consultation apart, the commons went to the white chamber and made answer by Sir William Trussell."<sup>819</sup>

"The Friday after, the Chancellor, by the King's commandment, required the Lords and Commons to provide against the manifold oppressions whereof he heard, so as justice might be executed to every subject."<sup>820</sup>

"On Saturday after, the Commons made answer thereto, that the best was, that approved justices should be chosen in this parliament for every county; and that upon their oath in the same to execute all laws and commissions to be made accordingly."<sup>821</sup>

"It is enacted that the chief children, born beyond the seas, shall, without doubt, inherit to their ancestors."<sup>822</sup>

"The king commanded that the things touching the arraignment of the archbishop, which remained in the hands of Sir *William de Kildesby* to be advised upon this parliament should be annulled and

<sup>815</sup> The chamber had been mentioned in 15 E. III (Cotton's Abr., p. 31, No. 8,) as it is now mentioned in 17 E. III. (*Id.*, p. 36, No. 2.) Mr. Stubbs, citing Rot. Parl. ii, 136, says: "The lords met in the white chamber; the knights and commons in the painted chamber." 2 Const. Hist., ch. 16, p. 392, note 1.

<sup>816</sup> Sir Robert Parning.

<sup>817</sup> Cotton's Abr., p. 36, No. 6.

<sup>818</sup> *Id.*, p. 37, No. 9. As to how long parliament has been divided into two houses, see Hall. Mid. Ages, ch. 8, part

3, p. 90, of vol. 2, Phila. edi., 1824; Stubbs's Const. Hist., vol. 2, ch. 16, p. 376, note 4; p. 392, note 2; and sections 10 and 20, *ante*, pp. 550, 551, and pp. 563, 564.

<sup>819</sup> 2 Stubbs's Const. Hist., ch. 16, p. 392, note 2.

<sup>820</sup> Cotton's Abr., p. 37, No. 10.

<sup>821</sup> *Id.*, No. 11. The king and lords sent unto the commons the special points of the charge of the justices of peace, which are enacted. *Id.*, No. 12.

<sup>822</sup> *Id.*, p. 38, No. 19.

totally outed or laid aside as such as were neither reasonable or true; and Master *John de Ufford* was commanded to bring them into parliament, to be vacated there."<sup>823</sup>

"It is agreed that the statute made at Westminster, the 15th of Edward the third, shall be utterly repealed and lose the name of a statute as contrary to the laws and the King's Prerogative."<sup>824</sup>

The King created his eldest son Prince of Wales May 12. Parliament sat until May 20.<sup>825</sup>

29. *Of the parliament of 18 Edw. III (1344). Its action as to privileges of clerks in chancery; and as to instruments brought from Rome. What was done as to such instruments 'in full chancery at Westminster.'*

It 18 Edw. III (1344), parliament was "holden at Westminster the Monday next after the Utaves of Trinity"<sup>826</sup> (June 7-28). The cause of it was declared by "the Chancellor,"<sup>827</sup> in the presence of the King and his son the Prince of Wales.—"The whole state were willed to advise" and "to shew their opinion" by a certain day. To what "every of the Lords and Commons by themselves, with one assent required," "the King agreed." This was in relation to war. As to what was cognizable in chancery, or before the council, there appears the following:

"The petitions of the clerks of the chancery; that where the Lord Chancellor or Lord Keeper, for the time being, ought to have the cognizance of all pleas of trespasses done by the said clerks or other servants, where the chancery shall remain, yet notwithstanding, the sheriffs of London had attached one Gilbert of Chrishull, a clerk of the said chancery, in London, at the suit of Killingbury, a draper, upon a bill of trespass; which Gilbert brought a *supersedeas* of privilege to the said sheriffs, which they would not allow, but drew him to

<sup>823</sup> 1 State Tr., 66; Cotton's Abr., p. 38, No. 22. *John de Offord* is mentioned *post* in § 30.

<sup>824</sup> Cotton's Abr., p. 38, No. 23. Next after which is this: 24. "It is agreed that such customers, controllers and searchers in fee for term of life or for years, as have let the same to farm, shall forfeit the same their offices, and that from henceforth no such office be granted but at the king's pleasure."

<sup>825</sup> 2 Stubbs's Const. Hist., ch. 16, p. 392, note 2. During this session there was an enactment as to money. 1 Stat. of the Realm, 299.

<sup>826</sup> "In the presence of the king certain lords and commons, being then assembled in St. Edward's chamber, commonly called the Chamber *de pinct*." Cotton's Abr., p. 43.

<sup>827</sup> *Robert de Sadington.*"

find sureties. The clerks pray remedy therefore and maintenance of their liberties. The parliament doth confirm their liberties, and reciting the contempt for neglecting the process, conclude that writs be sent to the Mayor of London to attach the sheriffs and others who were parties and maintainers of the quarrel, by their bodies to appear before the King in the chancery at a day certain, to answer as well to the contempts of the process as to the breach of the liberty, and damage of the party."<sup>328</sup>

"That commissions be sent into all the King's ports, to apprehend all such persons as shall bring in any such instrument from Rome, and to bring them forthwith before the council to answer thereto."<sup>329</sup>

"During chancellor Sadington's time "there is a curious entry of the seizure by the mayor and bailiffs of Sandwich of nine bulls and numerous letters and processes from the Roman court, attempted to be surreptitiously introduced into the kingdom '*in quâdam lineâ telâ ceratâ inclusos*,' and of their being delivered by the chancellor in 'full Chancery at Westminster,' to the chamberlain of the Exchequer, to be kept in the treasury."<sup>330</sup>

30. In 1345 John de Thoresby continued Master of the Rolls until May 20. The King sailed for Flanders, leaving his son Lionel custos of the kingdom, with a council of which John de Stratford was head and Robert de Stratford a member. After the King's return to England Robert de Sadington was succeeded as chancellor by John de Offord.

In 1345 there was no parliament. John de Thoresby (or Thursby) continued master of the Rolls as late as May 20; being about that time made keeper of the privy seal.<sup>331</sup> Edward declared war May

<sup>328</sup> Cotton's Abr., p. 45, No. 41, 42; Legal Judic. in Ch., edi. 1727, p. 15 to 18.

<sup>329</sup> Cotton's Abr., p. 45, No. 37. After which is this:

"That the deanery of York, which is to be recovered by judgment in the king's court, may be bestowed upon some able man within the realm who will maintain the same against him who holdeth the same by provision from Rome, being the common enemy to the king and to the realm, and that the mean profits may be employed upon the defence of the realm." *Id.*, No. 38.

A declaration "concerning exigents" is in 1 Stat. of the Realm, 299; and

1 'Statutes Revised,' pp. 165, 166, of edi. 1870. Ordinances made in this parliament are in 1 Stat. of the Realm, p. 300 to 303; and 1 Statutes Revised, edi. 1870, p. 166 to 170. As to the oath of masters or clerks of chancery there may be reference to Legal Judic. in Ch., edi. 1727, p. 118 to 121.

<sup>330</sup> N. Foëdera iii, 25, is cited in Foss's Biogr. Jurid.

<sup>331</sup> In the previous year he obtained a canonry in Lincoln Cathedral, and again visited the papal court as one of the king's ambassadors. He performed the same duty in France in 1346; Sept. 3, 1347, he was consecrated bishop of St. David's. Foss's Biogr. Jurid.

26, and sailed for Flanders July 1, having constituted his son Lionel custos of the kingdom,<sup>332</sup> and left as his advisers a council, whereof *John de Stratford*,<sup>333</sup> archbishop of Canterbury, was the head and *Robert de Stratford*,<sup>334</sup> bishop of Chichester, was a member.

Edward was not long in Flanders; he returned to England July 26. In three months *Robert de Sadington* resigned the Great Seal, and his successor was appointed.<sup>335</sup>

*John de Offord*<sup>336</sup> (sometimes called Ufford) was in the early part of the reign of Edward III, dean of the Arches, and from 8 to 18 Edw. III, continually engaged in important foreign embassies to the courts of France, Scotland and Avignon. He is described at first as *juris civilis professor*, and canon of St. Paul's; in 12 Edward III as archdeacon of Ely; and August 3, 1344, as dean of Lincoln. After October 4, 1342, and before May 20, 1345, he was keeper of the privy seal; on one occasion he is mentioned as the king's secretary.<sup>337</sup>

On the 26th of October, 1345, he was appointed chancellor.<sup>338</sup>

<sup>332</sup> 2 Stubbs's Const. Hist., ch. 16, p. 394, and note 2.

<sup>333</sup> A similar confidence reposed in him in the following year is the last record of importance in his career. He died at Mayfield in Sussex August 23, 1348, and was buried in Canterbury Cathedral. "His liberality to his church, his charity to the poor, his humble and pleasing manners, and his natural sense are acknowledged by all his biographers. That his reputation was high as an able politician, a loyal counsellor, and a man of deep legal knowledge for the time, is evidenced not more by the number of years during which he was engaged in high employments than by firmness in meeting his temporary" disfavour "and the alacrity with which his talents were again put in requisition. He is said to have crossed the channel thirty-two times in the public service." (Godwin 106-224; Barnes's Edw. III, 43-216; State Trials i, 57). Foss's Biogr. Jurid.

<sup>334</sup> In May, 1343, he was sent on a mission to the pope. "He was a prelate of

great resolution and courage, and, notwithstanding the king's charges against him, seems to have been uncorrupt and faithful. He is mentioned as a considerable benefactor both to the place of his birth and the city of his cathedral." (Godwin 507; Barnes's Edw. III 213.) "He survived his brother nearly fourteen years, and died at Aldingburne on April 9, 1362, whence his body was removed to his own cathedral." Foss's Biogr. Jurid.

<sup>335</sup> 2 Stubbs's Const. Hist., ch. 16, pp. 394, 395, and notes; Foss's Biogr. Jurid.

<sup>336</sup> His family derived its name from the manor of Offord, in Huntingdonshire; he is apparently the younger son of John de Offord, who had property at Offord-Darneys in that county. Foss's Biogr. Jurid.

<sup>337</sup> *Id.* He may have been the king's secretary, in 17 Edw III, at the time of the command in Cotton's Abr., p. 38, No. 22, mentioned in § 28, p. 582.

<sup>338</sup> Foss's Biogr. Jurid.

31. *Of the King's departure for, and proceedings in, France in 1346. Messengers from him to the parliament in 20 Edw. III. Ordinance requiring Justices and Barons to administer justice without favour or reward.*

In 1346 Edward sailed for France July 2; the battle of Crecy (or Cressy) was fought Aug. 26; Calais was besieged in Sept.; the king<sup>339</sup> was before it when he sent messengers<sup>340</sup> to the parliament which, in the presence of "Sir Lionel, the King's son, Lord Keeper of England," sat at Westminster in 20 Edw. III.<sup>341</sup>

An ordinance in 20 Edw. III (1346), contains the following:

1. "We have commanded all our justices, that they shall from henceforth do equal law and execution of right to all our subjects, rich and poor, without having regard to any person, and without omitting to do right for any letters or commandment which may come to them from us, or from any other, or by any other cause. And if that any letters, writs or commandments come to the justices, or to other deputed to do law and right according to the usage of the realm, in disturbance of the law, or of the execution of the same, or of right to the parties, the justices and other aforesaid shall proceed and hold their courts and processes, where the pleas and matters be depending before them, as if no such letters, writs or commandments were come to them; and they shall certify us and our council of such commandments which be contrary to the law, as afore is said. And to the intent that our justices should do even right to all people in the manner aforesaid, without more favour showing to one than to another, we have ordained and caused our said justices to be sworn that they shall not from henceforth, as long as they shall be in the office of justice, take fee nor robe of any man but of ourself, and that they shall take no gift nor reward by themselves, nor by others, privily nor apertly, of any man that hath to do before them by any way, except meat and drink, and that of small value; and that they shall give no counsel to great men or small in case where we be party, or which do or may touch us in any point,

<sup>339</sup> 2 Stubbs's Const. Hist., ch. 16, pp. 394, 395, and notes. While Edward was employed against the French, his queen (Philippa) is said to have been with the army, that for defence against the Scots, collected near New Castle, and formed for battle at Neville's cross. Turner's Engl., book 2, ch. 2, p. 204,

and notes 1 and 2, of Lond. edi. 1825.

<sup>340</sup> The messengers were Sir Bartholomew de Burghurst, Sir John Darcy, Lord Chamberlain, Mr. John Thoresby, clerk of the Privy Seal, and Mr. John Charlton. Cotton's Abr., pp. 46, 47.

<sup>341</sup> "The Monday next after the feast of the nativity of our Lord." *Id.*

upon pain to be at our will, body, lands and goods, to do thereof as shall please us, in case they do contrary."<sup>342</sup>

2. "In the same manner we have ordained in the right of the barons of the exchequer, and we have expressly charged them in our presence, that they shall do right and reason to all our subjects, great and small; and that they shall deliver the people reasonably, and without delay, of the business which they have to do before them, without undue tarrying, as hath been done in times past."

3. "We have ordained that all they which shall be justices assigned by commission to hear and determine, and such as shall be associated with them, and also justices of assizes to be taken in the country, and of jail delivery, and such as shall be assigned and associated to them, shall make first an oath in certain points, according as to them shall be enjoined by our council in our chancery, before that any commission be to them delivered."<sup>343</sup>

"In 20 E. III, c. 3, there is mention made of the King's counsel in chancery, which," it is observed,<sup>344</sup> "certainly included the Masters."<sup>345</sup>

32. *Of the King's return to England in 1347; and the parliament in 1347-8. Objection to one sitting in appellate court on writ of error to his judgment; when the chancellor may sit above. Complaint that in court below judgment is too long delayed. The King's answer as to how there may be redress.*

In 1347 Calais was taken August 4; Edward returned to England Octo. 12.<sup>346</sup>

Parliament was holden at Westminster (in 1347-8) "the morrow

<sup>342</sup> "And for this cause we have increased the fees of the same, our justices, in such manner as it ought reasonably to suffice them." 1 Stat. of the Realm, 303, 304.

<sup>343</sup> 1 Stat. of the Realm, 304. Subsequent chapters of same statute are—iv. That "none shall maintain any quarrels but their own;" v. That "Lords and Great Men shall put away maintainers of quarrels;" vi. That "Justices of assize shall enquire of the misdeemeanour of officers." This chapter concludes with the words: "And, thereupon, we have charged our chancellor and treasurer to hear the complaints of all them which will complain, and to ordain that speedy remedy be thereof

made." The ordinance is dated "the seventh day of March, the year of our reign of England the twentieth, and of France the seventh." *Id.*, 305. On p. 305, is the "oath of the justices;" and, on page 306, the "oath of the clerks of the chancery."

Chapters one, two, three, four and six of the ordinance (or parts thereof) are retained in 1 'Statutes Revised,' ed. 1870, p. 170 to 174.

<sup>344</sup> By the author of Legal Judic. in Ch., p. 69, of ed. 1727.

<sup>345</sup> 24 E. III, 35 a, is cited on same page (69), and *post* in ch. 21, § 6.

<sup>346</sup> 2 Stubbs's Const. Hist. ch. 16, p. 394, note 2.

after S. Hilary.”<sup>347</sup> The “petition of the Commons, with their answers,” embrace the following:

26. “That judgments given in the Exchequer may be redressed and reversed, if therein be error, in the King’s Bench, as well as error given in the Common Pleas; and not before themselves that gave the same; for it is not likely that a man will have a good conceit against his own opinion.”

*Answ.* “The King is pleased, that when any man complaineth of error given in the Exchequer, the *Chancellor* and Treasurer, and two justices, shall be assigned by commission to cause the record to be brought before them in the Exchequer, and the process of the plea wherein error is supposed, and the same to correct as shall appertain.”<sup>348</sup>

28. “That no person by the suggestion or certificate of an accuser be, by writ, sent for to come before the King’s council, where they are often enforced to make fines, or to lay down great sums of money, or otherwise *adjournez outre le mere*, as hath been heretofore often done, but that such grievances be not afterward done.”

*Answ.* “The King is pleased that such things be not done against reason.”<sup>349</sup>

60 “Whereas judgment in divers places hath long depended,—not given for difficulty of law,—that the King will ordain that judgment may be given without longer stay.”

*Answ.* “The justices before whom such pleas are hanging shall give judgment as soon as well they may; and if they cannot so do, then the tenor of such record, and the process of such pleas shall come into the parliament, and there shall be determined, according to the ordinance made in that behalf.”<sup>350</sup> (In § 21, *ante* pp. 565, 566.)

33. *Of the parliament in 22 Edw. III (1348). Before it there are complaints as to matters for which the King considers there may be ‘writs out of the chancery.’ ‘General writs or special’ shall be granted. Laws can be altered only by new statutes.*

The parliament holden at Westminster in 22 Edw. III (1348), (“the Monday next after the week in the midst of Lent,”) sat

<sup>347</sup> “In the 21st year of the reign of King Edw. III of England, and of France the 8th.” Such is the language in Cotton’s Abr., p. 51. The parliament sat from Jan. 14 to Feb. 12. 2 Stubbs’s Const. Hist., ch. 16, p. 397, note 3.

<sup>348</sup> Cotton’s Abr., p. 56, No. 26.

<sup>349</sup> *Id.*, No. 28.

<sup>350</sup> Cotton’s Abr., p. 63, No. 60. In *Id.*, p. 66, No. 65, is a petition as to the judgment against John Mantrevers in *Id.*, p. 6, No. 3. The confirmation of his pardon is in *Id.*, p. 81, No. 54, 55, 56.

from March 31, to April 13.<sup>351</sup> The "petitions of the Commons with their answers,"<sup>352</sup> conclude as follows:

26. "A long complaint against foresters for afforesting of men's purlieu, for undue trial, and for extortions; a request that the great charter may be kept, and that all men may enjoy the purlieu, according to the perambulation made in the time of King Edward the first."

*Ans.* "The King would the charter to be kept, and such as will complain in the right of their purlieu may have *writs out of the chancery*."

27. "Whereupon Surry and other counties showed that they could not, upon suit, have such writs."

"The order made at the last parliament shall be kept, and *general writs or special shall be granted*, to all such as will sue therefore, so as right be had to the King, to the subjects."<sup>353</sup>

30. "They pray that the petitions declared by them in the last parliament, whereunto the King and Lords had agreed, may be kept and not altered by any new coloured bill or practice."

"The King, by the assent of the Lords, made answer then that laws and process heretofore used could not be altered without making of new statutes, which, as yet, they could not attend, but shortly would."<sup>354</sup>

34. *Of William de Edington; his offices before and in 1349, when, the foundation of the order of the Garter was completed. Remarkable that its foundation should have been in a year wherein there was a terrible plague, which caused the death of the chancellor, John de Offord. In whose custody the Great Seal was from May 28, till June 16, 1349. Then John de Thoresby, bishop of St. David's was appointed chancellor.*

*William de Edington*,<sup>355</sup> educated at Oxford,<sup>356</sup> was in 1343, keeper of the king's wardrobe; and in 1344 (April 10), appointed chancellor of the Exchequer,<sup>357</sup> from which he was raised, at the end of two

<sup>351</sup> 2 Stubbs's Const. Hist., p. 397, note 3; Cotton's Abr., p. 69.

<sup>352</sup> *Id.*, p. 69 to 71.

<sup>353</sup> *Id.*, p. 71, No. 26 to 28. In 22 Edw. III is a case in Fitzherb. Abr. under title 'Petition.'

<sup>354</sup> Cotton's Abr., p. 30.

<sup>355</sup> Born at Edington, a parish in Wiltshire. Foss's Biogr. Jurid.

<sup>356</sup> Presented in 1335 to the living of Cheriton, in Hampshire; he also had a

canonry in Salisbury cathedral. In 1345 he was receiver of the ninth granted by parliament. *Id.*

<sup>357</sup> On the death of Adam de Orlton he was placed in the vacant see of Winchester by papal provision in his favour, dated Dec. 9, 1345; but he was wise enough to renounce the pope's nomination as prejudicial to the rights of the crown; and the king 'of his special favour and not by virtue of the said



years, to the high and responsible office of treasurer.<sup>358</sup> During the time of his treasurership there were arrangements for the order of the Garter;<sup>359</sup> in 1349, on April 23, its foundation was completed; and the king constituted *William de Edington* the prelate of it; perpetuating the dignity in his successors of the see of Winchester.<sup>360</sup>

Though the idea of the order of the Garter may have originated with Richard I,<sup>361</sup> and the success attained in war by Edward III may have induced the foundation of the order, yet it is remarkable that its foundation was completed at a period when a terrible plague was desolating the country and interrupting public business generally;<sup>362</sup> and completed in the very year in which the pestilence caused the chancellor's death.

*John de Offord* was the third chancellor who, during the reign, died in office. He had been raised to the archbishopric of Canterbury, but before his installation, was a victim of the disease which was devastating England. In 1349 he died on May 20.<sup>363</sup> After which the Great Seal was in custody of *Thomas de Cotyngnam*<sup>364</sup>

bulls,' accepted his fealty, and restored the temporalities to him on the 15th of the next February. *Id.* After becoming bishop, he, at Edington, built a church, and founded a large chantry for a dean and twelve ministers. *Id.*

<sup>358</sup> His treasurership was illustrated by the unfortunate introduction of two new coins, called a groat and a half groat, the real worth of which was so much less than their nominal value as to produce a corresponding increase in the price of all articles of consumption throughout the kingdom. *Id.*

<sup>359</sup> *Archæologia* xxxi, 3, 34, 40, 160; cited in 4 Lingard's Engl., ch. 2, p. 106, note.

<sup>360</sup> 1 Granger's Biogr. Hist., p. 12, ed. 1779. In 1355 he was left one of the custodes of the kingdom in the absence of the king on his new invasion of France. *Id.*

<sup>361</sup> In Rastell's 'Chronicle,' l. vi, under the life of Edw. III, is a curious pas-

sage; it is quoted in 1 Granger's Biogr. Hist., p. 12, ed. 1779.

<sup>362</sup> 4 Collyer's Engl., ed. 1775, pp. 128, 129. Mr. Stubbs says: "For three years the terrible plague of 1349 interrupted all public business; the war was discontinued by a series of short truces until the year 1355; the legal and judicial work of the country ceased for two years." 2 Stubbs's Const. Hist., ch. 16, pp. 398, 399.

At a period, however, when public business generally was interrupted, there was some legislation caused by the plague, such as "the statute of labourers" in 23 Edw. III (1349).

<sup>363</sup> At Tottenham; and was buried privately at Canterbury. Foss's Biogr. Jurid.

<sup>364</sup> He was no doubt brought up in the chancery, as he was presented by the king so early as 13 Edw. II, 1319, with the church of Wygeton, and acted as the attorney of *William de Herlaston*, a

and others, from May 28 till June 16. Then *John de Thoresby* (or Thursby), bishop of St. David's,<sup>365</sup> was appointed chancellor.<sup>366</sup>

35. *How, in 1350, William de Thorpe was removed from, and William de Shareshull was advanced to, the chief justiceship of the King's Bench. On a charge against Thorpe, of bribery, he was adjudged to be hanged; and the sentence was affirmed; but his life was saved. What else appears as to him.*

*William de Thorpe*, who, from Nov. 26, 1346, had presided over the King's Bench, and who in parliament had declared the cause of calling it in 21 Edw. III, and in 22 Edw. III, was after October, 26, 1350, in a less desirable position. *William de Shareshull* (mentioned in § 26, p. 577) was on that day advanced to the head of the King's Bench.<sup>367</sup>

It was alleged that five persons,<sup>368</sup> having, before Sir *William Thorpe*, chief justice of the king's bench, and one of the justices of the assize for the county of Lincoln, been indicted of felonies, he, at the assizes at Lincoln, in 23 Edw. II, to stay a writ of exigent against them *cepit munera contra juramentum suum*.<sup>369</sup> Before five commissioners<sup>370</sup> appointed by the King's writ of Nov., 1350, to examine the matter, he confessed the bribery, or in *Ld. Coke's* language, '*non potuit dedicere*,' &c.; and he was adjudged to be hanged.<sup>371</sup> Mr.

clerk in the chancery in 1325. For nearly thirty years, from 14 to Edw. III—1340 to 1369—*Thomas de Cotynham* was himself one of the clerks in chancery. During part of this time he went to Ireland as master of the Rolls there; to which office he was appointed in 30 Edw. III (1356). *Id.*

<sup>365</sup>Consecrated bishop Sept. 3, 1347. *Id.*

<sup>366</sup>He was translated to the bishopric of Worcester Nov. 4, 1349, and was raised to the archbishopric of York Oct. 22, 1352.

<sup>367</sup>And presided in it till July 5, 1357. *Foss's Biogr. Jurid.*

<sup>368</sup>*Richard Saltley, Hildebrand Boresward, Guilbert Holliland, Thomas Derby and Robert Dalberby.* 3 Inst., 145.

<sup>369</sup>Viz: of R. S. £10; of H. B.

£20; of G. H. £40; of T. D. £10; and of R. D. £10. 3 Inst., 145.

<sup>370</sup>Viz: the earls of Arundell, Warwick and Huntingdon, and two lords, the lord Grey and the lord Burghers.

<sup>371</sup>Mr. *Foss* says, that under the writ of Nov. 3, Thorpe was committed "to the Tower of London, and all his lands and goods were ordered to be seized into the king's hands until the royal will and pleasure should be known;" and the king issued another writ (Nov. 19), commanding immediate judgment that he should be degraded and hanged." *Biogr. Jurid.*

The language of the record quoted by *Lord Coke* is "*Suspendatur et quod omnia træ et tenta, bona et catalla sua remaneant forisfacta.*" 3 Inst. 145.

Foss states that "on the same day, the king, by writ of privy seal, signified that he 'gave and forgave him his life,' but ordered his body to be committed to prison."<sup>372</sup>

The first parliament after the plague, was holden in 25 Edw. III, at Westminster.<sup>373</sup> The causes wherefore the parliament was called being declared, "Sir *William Shareshall*, Knight, the Chief Justice to the King, willed the Commons to weigh and well to provide therefore."<sup>374</sup>

"The King caused to be brought before him in full parliament the record of judgment had against Sir *Will. Thorp*, by<sup>375</sup> his late Chief Justice, and caused the same openly to be read before the nobles of the parliament, to hear every of their advices; all whom affirmed the judgment to be rightly given, considering that he had against his oath received bribes; and therefore it was agreed by the whole parliament that if the like case should hereafter happen, the King might take to him such nobles as he should best think, and therein do according to his pleasure."<sup>376</sup>

Although it may have been right to give judgment against Sir *William Thorpe* for such punishment as was proper for the offence of bribery, yet *Ld. Coke* considers that the judgment *quod suspendatur* was not warranted by law, and "this precedent is not to be followed";<sup>377</sup> but, *Thorp*'s life was saved, as already stated; and although his lands, horses, &c., were seized into the king's hands, yet in a subsequent year, there was a pardon with restoration of part of his lands, viz, the manor of *Changton* in *Sussex*;<sup>378</sup> and—what is much more remarkable—he was after an interval of eighteen months

<sup>372</sup> Biogr. Jurid.

<sup>373</sup> "The Monday in the Utaves of the purification of our Lady." "For that sundry of the lords were not the same day come, the parliament was continued until Thursday, and from Thursday to Friday then ensuing; at which day "Sir *Lionel*, the king's son, with sundry nobles, did assemble in the Chamber de Pinct., where the king's commission was read; the which authorized the said

*Lionel* in his absence to begin and proceed." Cotton's Abr., p. 73.

<sup>374</sup> *Id.*, p. 73, No. 6. The session, in 1351, was from Feb. 9 to March 1. 2 Stubbs's Const. Hist., ch. 16, p. 398; also p. 405, note.

<sup>375</sup> The word *by* seems to have been printed here erroneously.

<sup>376</sup> Cotton's Abr., p. 74 to No. 10.

<sup>377</sup> 3 Inst., pp. 145, 146.

<sup>378</sup> Foss's Biogr. Jurid.

made second baron of the Exchequer May 24, 1352. At least it seems so.<sup>879</sup>

36. *Proceedings of Parliament in 25 Edw. III (1350-51 and 1351-2). Stat. 1, as to children inheriting, whether born in England or elsewhere. Also of Stat. 2, Stat. 3, and Stat. 4. Stat. 5 provides, in ch. 2, as to treason; in other chapters for better protection of person and property; and as to executors of executors. Provisions of Stat. 6 and Stat. 7. Also of ordinances in 27 Edw. III (1353).*

In 25 Edw. III (1350-51 and 1351-2), there was more than one session of parliament. In the parliament holden at Westminster "the Monday in the Utaves of the purification of our Lady," there were among the petitions of the Commons, with their answers," the following:

16. "That no man be put to answer of his freehold, or of anything that toucheth life, member or fine by *opposite* before the council but by due process of law."

*Ans.* "Touching freehold, the King agreeth, and of the rest will be advised."<sup>880</sup>

30. "That no purveyor of timber do take away trees from any man's house, and that exceptions thereof be in all their commissions."

*Ans.* "The King granteth thereunto."<sup>881</sup>

Of this parliament's statutes, the first printed in Statutes of the Realm, is on page 310; "a statute for those who are born in parts beyond sea"; it purports to be "at the utas of the purification of our lady," the year of the King's "reign of England the 25th, and of France the 12th"; and to be passed "that all doubts and ambiguities should be put away, and the law in this case declared and put in a certainty."

"That the law of the Crown of England is, and always hath been such, that the children of the Kings of England, in whatsoever parts

<sup>879</sup> Unless the *William de Thorpe* who then received that appointment was a different person. The baron of the Exchequer (whether the same or a different person) was present among the

judges in the parliament of 28 and 29 Edw. III, but not later. *Id.*

<sup>880</sup> Cotton's Abr., p. 74.

<sup>881</sup> *Id.*, p. 75; also mentioned in *Id.*, p. 79.

they be born, in England or elsewhere, be able and ought to bear the inheritance after the death of their ancestors."<sup>882</sup>

As of some previous parliament, so of the parliament whose proceedings are mentioned in Cotton's Abr., p. 78 to 82, Sir John of Codrington was clerk; and Sir *William Shareshall*, chief justice, declared the cause. Admitting that the parliament was holden at Westminster, it seemed to be doubted by Mr. Cotton (or Mr. Prynne) whether it was (as stated in the beginning of page 78 of Cotton's Abr.) holden "The Friday the feast of Saint Hilary in 25 Edw. III. It is, however, clear that it was holden in 1352,<sup>883</sup> and in the feast of Saint Hilary. The statute in 1 Stat. of the Realm, p. 319 to 324, is there printed as 'Statute the fifth' and as made in the parliament holden in the feast of Saint Hilary in 25 Edw. III." Ch. 1 is of Purveyors. Chapters two, three, four, five, seven and fourteen (or parts thereof) are retained in 1 'Statutes Revised.'<sup>884</sup> Ch. 2 is of treason, and is mentioned by Mr. Stubbs as the first law that defined that crime and its penalty.<sup>885</sup>

<sup>882</sup> After a special provision for Henry, son of John de Beaumont, Elizabeth, daughter of Guy de Bryan, and Giles, son of Ralph Dawbeny, which were born beyond the sea out of the legerance of England, there is the following:

"That all children inheritors which, from henceforth, shall be born without the legerance of the king, whose fathers and mothers at the time of their birth be, and shall be at the faith and legerance of the King of England, shall have and enjoy the same benefits and advantages, to have and bear the inheritance within the same legends as the other inheritors aforesaid in time to come; so always that the mother of such children do pass the sea by the license and wills of their husbands." 1 Statutes Revised, ed. 1870, p. 175 to 177.

In Statutes of the Realm, p. 311 to 313, under a caption importing that it was in the parliament holden "in the *Octave* of the purification of the blessed Virgin Mary," is "Statute the second;" being another statute as to labourers.

In same volume, p. 313 to 315, is "Statute the third," being as to measuring cloths and selling merchandize, and as to new wears in rivers.

In *Id.*, p. 316 to 318, is "Statute the fourth," being "the statute of provisors of benefices." It is in 1 'Statutes Revised,' p. 177 to 184, of ed. 1870. Mr. Stubbs speaks of this as the first statute of provisors, and mentions that it was passed in Feb., 1351. 2 Const. Hist., ch. 16, p. 410. The language, in 2 Inst., 583, and 4 Bl. Com., 110, is remarked upon in Hall. Mid. Ages, ch. 7, note, on p. 478 of vol. 1, ed. 1824.

<sup>883</sup> Mr. Stubbs states that parliament sat in "1352, Jan. 13, Feb. 11, and August 16-25." 2 Const. Hist., ch. 16, p. 405, note 1.

<sup>884</sup> Ed. 1870, p. 184 to 189.

<sup>885</sup> 2 Const. Hist., ch. 16, p. 410. It was construed in 4 Jac. 1, in *Leake's* case, 12 Rep., 17.

In other chapters are the following important enactments,

III. "That no indictor shall be put in inquests upon deliverance of the indictes of felonies or trespass, if he be challenged for that same cause by him which is so indicted."

IV. "Whereas it is contained in the Great Charter of the Franchises of England that none shall be imprisoned nor put out of his freehold, nor of his franchises nor free custom, unless it be by the law of the land; It is accorded, assented and stablished, that from henceforth none shall be taken by petition or suggestion made to our Lord the King; or to his council, unless it be by indictment or presentment of good and lawful people of the same neighborhood where such deeds be done, in due manner, or by process made by writ original at the common law; nor that none be out of his franchises nor of his freeholds unless he be duly brought in to answer, and forejudged of the same, by due course of the law; and if anything be done against the same, it shall be redressed and holden for none."

V. "It is accorded and stablished that executors of executors shall have actions of debts, accounts and of goods carried away of the first testator's, and execution of statutes merchants and recognizances made in court of record to the first testator, in the same manner as the first testator should have had if he were in life"—"and that the same executors of executors shall answer to other, of as much as they have recovered of the goods of the first testator's as the first executors should do if they were in full life."

VI. "It is accorded and stablished that no taker of wood nor of timber to the King's use for work, nor for to make other thing, cut or cast down the trees of any man growing about or within his house; and if any do to the contrary, he shall make Gree to the party of his treble damage, and to have one year's prison and to be forejudged of his office."<sup>386</sup>

<sup>386</sup> 1 Stat. of the Realm, pp. 320, 321. Ch. vii, is against foresters, &c., gathering what is not due; ch. viii, is as to finding men of arms, &c.; ch. ix, abolishes auncil weight, and requires goods to be weighed by balance; ch. x, is of enforcing magna charta; ch. xi, of "aid to make the king's eldest son knight, and to marry his eldest daughter"—13 Rep., 27; ch. xii, of exchange of gold for silver; ch. xiii, that money shall not be impaired in weight nor in allay; ch. xiv, of process against persons indicted of felony; ch. xv, against unreasonable taking of sheep; ch. xvi, as to exception of non-tenure of parcel; ch. xvii, of process in debt, detinue and replevin; ch. xviii, of

villainage; ch. xix, of suing the king's debtors; ch. xx, of receiving plate and delivering coin by weight; ch. xxi, of abuses by the king's butlers; ch. xxii, "penalties on purchasing provisions at Rome for abbies or priories;" ch. xxiii, as to "companies of Lombards."

"An ordinance for the clergy," made at Westminster in 25 Edw. III, is printed as "Statute the sixth." 1 Stat. of the Realm, 324 to 326; 1 Statutes Revised, p. 189 to 192.

"The statute of the form of levying of the fifteenth," is printed as "Statute the seventh." 1 Stat. of the Realm, pp. 327, 328.

Ordinances in 27 Edw. III (1353), are mentioned in Cotton's Abr., p. 81. The first statute of Præmunire declaring the forfeiture and outlawry of those who sued in foreign courts for matters cognizable in the King's courts, was an ordinance of this year.<sup>387</sup> "The ordinance of the Staples," printed as "Statute the second,"<sup>388</sup> has in ch. ix, of "recognizances," a provision as to what "shall be certified in the chancery" and what shall issue and "be returned in the chancery."<sup>389</sup>

37. *Appointments from 1353 to 1357 to the Exchequer Bench, King's Bench and Common Pleas.*

Exchequer Bench:

1354, November 27, *William de Retford*,<sup>390</sup> made a baron.<sup>391</sup>

1356, October 6 (30 Edw. III), *Henry de Greystoke*.<sup>392</sup>

<sup>387</sup> 2 Stubbs's Const. Hist., ch. 16, p. 410. It is entitled "a statute against annullers of judgments of the King's courts"; and is printed as "statute the first." 1 Stat. of the Realm, 329; 1 'Statutes Revised,' edi. 1870, p. 193 to 195. Chapter ii is as to suggestions in a pardon of felony; ch. iii is of commissions to enquire of offenders against Stat. 23 Edw. III, c. 6; ch. iv is of "the mischief resulting from forfeiture of clothes not measuring the assize"; ch. v against forestalling or engrossing Gascoin wine; ch. vi, of bringing wines to English ports; ch. vii, "when and where Gascoin wines may be bought"; ch. ix, of gauging wines.

<sup>388</sup> 1 Stat. of the Realm, 332 to 343.

<sup>389</sup> *Id.*, p. 337. "The ordinance of the fees of the Mayors and Constables, of the Staple," is *Id.*, pp. 343, 344.

<sup>390</sup> Probably son of Robert de Retford (mentioned in ch. 16, § 29), who was of Nottinghamshire; on the roll of which is a document of 23 Edw. III, appointing William de Retford keeper of the great wardrobe. He is there called 'clericus.' Foss's Biogr. Jurid.

<sup>391</sup> In Benloe's Reports he is mentioned

as a justice of assize in 32 Edw. III. *Id.*

<sup>392</sup> Perhaps so called from being born in Greystoke, in Cumberland. He was connected with the king's household or Exchequer in 27 Edw. I, as well as several terms afterwards under Edward II. He acted as paymaster of the forces in Nottingham and Derby, and was (by Edw. II) appointed to assist the sheriff of Cumberland in arresting Knights Templars. From 16 Edw. III, he held the office of custos of lands and tene-ments reserved for the use of the king's chamber; in this character various manors, &c., were under his charge; in parliaments of 25 and 28 Edw. III, he was ordered to be present on the hearing of petitions touching these lands to give information '*pur le roi et au le roi.*' Observing that Dugdale introduces him, in 27 Edw. III, as attorney-general, Mr. Foss says "it is probably in reference to these matters only, as *he does not appear to have been otherwise connected with the law.* Though described as 'clericus,' he could not have taken that grade in holy orders which prevented him from marrying, for *his widow Jane, the daughter of Sir William Pickering, is*

1357, *John de Bukyngham*<sup>393</sup> (or Bokyngham) made a baron.<sup>394</sup>

### King's Bench:

1354, April (28 Edw. III), *Thomas de Setone*.<sup>395</sup>

1355, October 12, *William de Notton*,<sup>396</sup> made a judge of this bench.<sup>397</sup>

said to have married Chief Justice *Gascoigne*. He had a grant of the French portion of the church of Mapeldurham, and of a messuage and lands in Resceby, in Yorkshire, for his good services." *Id.*

<sup>393</sup> Educated at Oxford, where he took the degree of Doctor of Divinity; in 1350 collated archdeacon of Northampton; in 1351 (24 Edw. III) appointed keeper of the king's great wardrobe. *Foss's Biogr. Jurid.*

<sup>394</sup> It is presumed that his seat on this bench was resigned on his becoming keeper of the privy seal two years afterwards, which office he retained till the middle of 37 Edw. III. In 1360, he and Robert de Herle were the king's lieutenants and captains of the duchy of Brittany. He was advanced to the deanery of Lichfield about 1361, and to the bishopric of Lincoln on April 5, 1363. After he had ruled that diocese for thirty-four years, Pope Boniface IX, in revenge (it is said) for certain contests between them, removed him from it in 1397, offering him in its stead the see of Lichfield. The offended prelate, however, refused to accept what he considered as a degradation; he chose rather to retire to the cloisters of Canterbury, where he died in less than six months (March 10, 1398). His works are mentioned by Bale and Pitts; they "prove him to have been an able disputant and profound scholar." *Id.*

<sup>395</sup> In the Year Books, mentioned previously for ten years. In 19 Edw. III, he was one of the king's serjeants, when

he applied to the council, on behalf of the community of the bishopric of Durham, to forego the iter there for that year; the application was granted on their paying 600 marks. Speaking of Dugdale's placing him as a judge of the King's Bench in 28 Edw. III, and of the Common Pleas in 29 Edw., Mr. Foss observes that he was certainly a judge of one of them in April, 1254 (28 Edw. III), for he was then one of the triers of petitions in parliament. *Biogr. Jurid.*

<sup>396</sup> Of a Yorkshire family, and probably born in the place of that name. Judging by the frequent recurrence of his arguments (in the Year Books), he was an advocate of considerable eminence. In 20 Edw. III, he had from the king a confirmation of a messuage, and above 200 acres of land, part of the manor of Fishlake, in Yorkshire, by the service of one rose. In the same year he was one of the king's serjeants. *Id.*

<sup>397</sup> He was subjected, in 1358, to excommunication, for neglecting to appear to the pope's citation to answer for his sentence against the bishop of Ely for harbouring the man who had slain one of Lady Wake's servants. His service in the King's Bench ended in 35 Edw. III, when he was constituted chief justice of the Common Pleas in Ireland; two years afterwards he was one of the council of the king's son Lionel, earl of Ulster, then lieutenant of that county. *Id.*



## Common Pleas:

1354, Feb. 6 (28 Edw. III), *Henry Green*,<sup>398</sup> called to this bench.<sup>399</sup>

1354, Feb. 20, *Roger Hillary*, constituted Chief Justice.<sup>400</sup>

1355, Michaelmas (29 Edw. III), *Thomas de Setone*.<sup>401</sup>

1356, June 27 (30 Edw. III), *Robert de Thorpe*,<sup>402</sup> made Chief Justice.<sup>403</sup>

1357, July 4, *Henry de Motelow*,<sup>404</sup> raised to this bench.<sup>405</sup>

38. *Proceedings in parliament of 28 Edw. III (1354). What is embraced in its statute. Also of the parliament of 29 Edw. III (1355).*

In 28 Edw. III (1354) parliament was holden at Westmin-

<sup>398</sup> Queen Isabella having granted to him, probably for services as an advocate, the manor of Brigge-stoke, in Northamptonshire, her son, Edward III, confirmed it to him for life. He was appointed one of the king's serjeants at law in 19 Edw. III. Foss's Biogr. Jurid.

<sup>399</sup> And knighted. In 1358, having been cited before the pope for pronouncing a judgment against the bishop of Ely for harbouring one of his men who had burnt a manor of Lady Wake's, and slain one of her servants, he was excommunicated for his non-appearance. It does not appear how he was cleared from this sentence; it did not prevent his being raised to a higher office. *Id.*

<sup>400</sup> In place of *John de Stonore* who had died. Although Mr. Foss in his article on Roger Hillary states that he "continued to preside in the court for the remainder of his life," yet there is ground for saying that he was not in the chief justiceship after June 27, 1356. His death may have occurred in June of that year, instead of 1337, as stated in Biogr. Jurid., p. 348. He was buried in the church of All Saints in Staffordshire. *Id.*

<sup>401</sup> Though before mentioned in connection with the King's Bench, yet "he was a judge of the Common Pleas in Michaelmas, 1355, 29 Edw. III, for

finances were then acknowledged before him." Mr. Foss thinks it "probable that he was appointed to this court between the previous Hilary and Trinity Terms, as the list in the Year Book omits his name in the former, and includes it in the latter term. In 30 Edw. III, he recovered damages from a woman for calling him 'traitor, felon and robber' in the public court. *Id.*

<sup>402</sup> Of Thorpe, near Norwich. He was educated at Cambridge, commenced his career as an advocate so early as 14 Edw. III, attaining the rank of king's serjeant in 1345. He was one of the justices to try felonies in Oxford county in 1355, and was frequently employed as a justice of assize. Foss's Biogr. Jurid.

<sup>403</sup> In the University of Cambridge he laid the foundation of the divinity schools, with the chapel over them, in 1356; and was afterwards master of Pembroke College. Nine years after 1356 he had an extended grant of £40 a year to support the dignity of knighthood which the king had conferred upon him; he continued to preside in the Common Pleas for nearly fifteen years. *Id.*

<sup>404</sup> Among the advocates in the Year Books from 18 Edw. III. *Id.*

<sup>405</sup> Fines were not acknowledged before him later than Easter, 1361 (35 Edw. III). *Id.*

ster.<sup>406</sup> Sir *William Shareshull*, Chief Justice, proclaimed before the King, Lords and Commons the causes for which it was called. It sat from April 28 to May 20, and had under consideration (besides other things) the judgment in 4 Edw. III, against Roger of Mortimer, late earl of March; and a previous judgment against Edmund, earl of Arundel.<sup>407</sup> The proceedings in these cases give support to Mr. Hume's position as to "the principles of law and justice" in the reign of Edw. II, and the early part of the reign of Edward III—

That they "were established in England, not in such a degree as to prevent any iniquitous sentence against a person obnoxious to the ruling party; but sufficient, on the return of his credit or that of his friends, to serve as a reason or pretence for its reversal."<sup>408</sup>

The "petitions of the Commons, with their answers" (p. 86 to 88), embrace the subjoined.<sup>409</sup>

The statute of 28 Edw. III, although it embraces some matters not at this day of great interest,<sup>410</sup> also recognizes fundamental principles,<sup>411</sup>

<sup>406</sup> "The Monday after Saint Mark, the Evangelist." Cotton's Abr., p. 85.

<sup>407</sup> *Id.*, pp. 73, 74, Nos. 8, 9, and pp. 85, 86, No. 8 to 15; 2 Stubbs's Const. Hist., ch. 16, note 1.

<sup>408</sup> 2 Hume's Engl., ch. 15, pp. 184, 185, of N. Y. ed., 1850.

<sup>409</sup> No. 19. "It is enacted that the justices of the peace shall be of the best in every county; that upon the displacing of any of them others be placed at the nomination of the Knights of the same county; that they sit four times at the least every year; that none be displaced without the King's special commandment or testimony of their fellows."

No. 30. "That no inquest upon conspiracy, confederacy, maintenance or such like be returned but by the sheriff of the most lawful men and highest in that part of the country where such acts are laid; that all evidences therein be given openly at the bar; and that no man speak with the jury after they depart therefrom. It is enacted."

No. 58 is "as to a treaty of a peace between the King and the French."

The commons submitting to the order of the King and of his nobles, "Sir Mich, of Northumberland, keeper of the King's privy seal, commanded Sir John of Swinley, the Notary Papal, to make thereof public instrument."

<sup>410</sup> ii. As to Lords of Marches of Wales; iv. Of satisfying the King the mean rates of certain lands; v. Against exporting iron; xii. Of purveyance; xiii. Confirming with amendments statute of the staple 27 Edw. III, stat. 2; xiv. Showing wools at the staple; xv. Bounds of the staple.

<sup>411</sup> i. "That the Great Charter and the Charter of the Forest and all other statutes before this time made and used, be kept and maintained in all points." 1 Stat. of the Realm, p. 345.

iii. "That no man of what estate or condition that he be shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of law." *Id.*

and contains enactments illustrating the progress of government and of law.<sup>412</sup>

The parliament at Westminster, in 29 Edw. III (1355),<sup>413</sup> sat from Nov. 24 to Dec. 30. According to the king's pleasure, there was declaration to the assembly by Sir *William de Manny*, as well as by Sir *William de Shareskull*.<sup>414</sup>

The "petitions of the Commons, with their answers," embrace the subjoined.<sup>415</sup>

39. *David de Wollore, Master of the Rolls from 1346 for about 25 years. In the hands of him and others the Great Seal was left in 1353, when John de Thoresby went to York. Of Thoresby, until Nov. 1356, when he retired from the chancellorship, and was succeeded therein by William de Edington, who held the office until 1363. Of the treasurers from 1356 to 1371. Simon de Langham treasurer from Nov. 1360, till Feb. 1363, then became chancellor, and having been translated from the bishopric of Ely to Canterbury in 1366, soon afterwards resigned the Great Seal.*

*David de Wollore*<sup>416</sup> is first mentioned in the office of Master of the Rolls<sup>417</sup> on July 2, 1346 (20 Edw. III). He continued in this

<sup>412</sup>vi. Of choosing coroners; vii. Removing sheriffs from office yearly; viii. Of the writ of attainst; ix. Against granting commissions and general writs to sheriffs at their own suit; x. Penalty on the mayor, sheriffs and aldermen not redressing errors and misprisons; xi. As to murders and robberies, confirming and amending statute of Winchester, 13 Edw. I, ch. 1, 2.

Chapters ii, iii, vi, vii and ix. are in 1 'Statutes Revised,' edi. 1870, pp. 196, 197.

<sup>413</sup>"The day after Saint Martin the bishop." Cotton's Abr., p. 90.

<sup>414</sup>*Id.*, pp. 90, 91; 2 Stubbs's Const. Hist., ch. 16, p. 405, note.

<sup>415</sup>No. 21. "That the points of confederacy may be declared, considering that the judges judge rashly thereof."

*Ans.* "None shall be punished for confederacy but in case where the statute speaketh expressly upon the point contained in the same statute."

No. 24. "That remedy may be had against such as to defraud their creditors before judgment, do convey away their lands and goods."

*Ans.* "The statute therefore made shall be observed." Cotton's Abr., pp. 91, 92.

<sup>416</sup>Named from the town of Wollore, in Northumberland. He was sent to attend the parliament in Scotland in 8 Edw. III; his mission occupied eighteen days, and he was allowed three shillings a day for his expenses. Foss's Biogr. Jurid.

<sup>417</sup>It does not clearly appear who was master of the Rolls from May 20, 1345, to July 2, 1346.

office about twenty-five years; during which he frequently had custody of the Great Seal.<sup>418</sup>

During the chancellorship of *John de Thoresby* (or Thursby), he was (Nov. 4, 1349,) translated to the bishopric of Worcester, and (Octo. 22, 1352,) raised to the archbishopric of York. As archbishop he went to York August 4, 1353. Then the Great Seal was left in the hands of *David de Wollore* (Master of the Rolls), *Thomas de Brayton* (or Drayton) and *Andrew de Offord*.<sup>419</sup> It does not appear how long, on this occasion, absence at York interfered with the proper discharge of the chancellor's duties.

"He" (the archbishop) "was left one of the custodes of the kingdom when King Edward renewed his invasion of France in 1355 (*N. Fœdera*, 305); but, on his sovereign's return, after the battle of Poitiers, in the ensuing year, his advancing age prompted him to apply for liberty to retire from the chancellorship which he had held with credit and honour longer than any other chancellor of this reign, though for little more than seven years in all, during four of which he had been archbishop. He was accordingly '*benevole et gratanter*' exonerated from his duties on November 27, 1356,"<sup>420</sup> (30 Edw. III).

<sup>418</sup> In 1349, 1351, and 1353. He was receiver of petitions in parliaments from 36 to 43 Edw. III. In his clerical character he was a canon of St. Paul's, and rector of Bishop's Wearmouth, where his successor was inducted in 1370, the year of his death. Foss's Biogr. Jurid.

<sup>419</sup> Brother of John de Offord, and, like him, employed in diplomatic missions. From 17 to 20 Edw. III, he was on embassies to Rome, Castile, Portugal, Flanders, and France. He may have been made a clerk or master of the chancery during his brother's chancellorship, but is not distinctly named as such till a later period. He is described as *juris civilis* professor, afterwards as canon of York, and, in 1349, was admitted as archdeacon of Middlesex. He was a receiver of petitions in the parliaments of 28 and 29 Edw. III, and died in 1358. Foss's Biogr. Jurid.

<sup>420</sup> Foss's Biogr. Jurid. "His political

duties, during the seventeen remaining years of his life, were confined to conducting various treaties with the Scottish king, but for the most part he devoted himself to his episcopal functions and to the renovation of his cathedral. He laid the first stone of the new choir July 29, 1362; and besides exciting the nobles and clergy of his province to aid his endeavours, he expended large sums in carrying on that splendid work, and also in restoring and ornamenting the chapel of St. Mary, where his remains were afterwards deposited. The question of precedence between the two archbishops, which had for many years occasioned unseemly contests, was settled by agreement between him and Archbishop Islip;" "Pope Innocent IV, in his confirmation of the arrangement, introduced the nice distinction of primate of England, and primate of *all* England." Archbishop Thoresby "died

On the same day (Nov. 27, 1356,) the Great Seal was placed in the hands of *William de Edington*, bishop of Winchester (mentioned in § 34, p. 588); he retained it for more than six years, during which he preserved the royal favour without losing the confidence of the people. He was, as the record says, 'gratefully absolved' from its duties on Feb. 19, 1363.<sup>421</sup>

At the Treasury, Bishop *Sheppey*, of Rochester, presided from 1356 to 1360.<sup>422</sup> *Simon de Langham*<sup>423</sup> was raised to the office of treasurer Nov. 21, 1360 (34 Edw. III.);<sup>424</sup> and continued in this office till Feb. 1363.<sup>425</sup>

Then *William de Edington*, bishop of Winchester, was succeeded as chancellor by *Simon de Langham*, bishop of Ely. He was on July 22, 1366, translated to Canterbury by papal provision;<sup>426</sup> and in 1366, or 1367, resigned the Great Seal.<sup>427</sup>

at his manor of Thorpe on Nov. 6, 1373 (having been engaged in the public service for nearly forty-eight years of Edward's reign), with a character honorably described as '*contentionum et litium hostis, et pacis et concordia amicus*.' Besides several other religious works, he wrote a commentary, in the English tongue, on the Lord's Prayer, the Decalogue and the Articles of Faith, for the use of the people of his province. That on the Ten Commandments is printed by Thoresby in the appendix to his '*Vicaria Leodensis*.'"*Id.*

<sup>421</sup> The monks of Canterbury elected him archbishop on the decease of Simon Islip, but he refused the proffered dignity, humourously saying, that though Canterbury was the higher rank, Winchester was the better manger. He continued high in the king's confidence until his death, Octo. 7, 1366. He was buried at Edington. Foss's Biogr. Jurid.

<sup>422</sup> 2 Stubbs's Const. Hist., ch. 16, p. 413.

<sup>423</sup> A monk of Westminster in 1355, and till his death, forty years afterwards, a devoted friend to the house. "Ap-

pointed prior in April, and abbot in May, 1349, he applied his early savings to the discharge of the engagements of the monastery; he suppressed its abuses, regulated its discipline, and gained the esteem of the brotherhood by his kind and equitable sway." Foss's Biogr. Jurid.

<sup>424</sup> Elected two years afterwards to two bishoprics, London and Ely; by his own selection he was appointed to the latter Jan. 10, 1362. *Id.*

<sup>425</sup> Bishop Barnet, of Worcester, presided at the treasury from 1363 to 1368, and Thomas Brantingham, afterwards bishop of Exeter, from 1368 to 1371. 2 Stubbs's Const. Hist., ch. 16, p. 413.

<sup>426</sup> Mr. Foss thinks it "probable that the 'railing hexameters' on his translation from Ely to Canterbury—

*'Latentur cæli, quia Simon transit ab Ely;*

*Cujus in adventum flet in Kent millia centum'*

were rather the malicious effusion of an individual enemy than the expression of popular feeling." Biogr. Jurid.

<sup>427</sup> "During his primacy he greatly ex-

40. *Of the parliament of 31 Edw. III (1357); its enactments; especially one statute as to administration of an intestate's estate, and another giving the chancellor and treasurer jurisdiction to correct errors in judgments of the Exchequer. Also of the parliaments of other years before 36 Edw. III (1362).*

Mr. Stubbs observes:

"From 1336 to 1362 the rolls of parliament are lost, and our information on parliamentary business, derived from other sources, is very scanty."<sup>428</sup>

In Cotton's Abr. there are no proceedings in parliament after 29 Edw. III (1355), until 36 Edw. III (1362). But from such sources as exist, we learn that in 31 Edw. III (1357) there was a parliament "at Westminster the Monday next after the week of Easter";<sup>429</sup> that it sat from April 10 to May 16;<sup>430</sup> and that it passed a statute—'Stat-

tered himself in the correction of the abuse of the privilege of pluralities; but he incurred some censure by the removal of John Wickliffe from the headship of Canterbury Hall in Oxford, which was in consequence of the appointment having been contrary to the statutes of Simon Islip, the founder."—"On September 27, 1368, Pope Urban V promoted Langham to the dignity of a cardinal presbyter, by the title of St. Sixtus. The King taking umbrage at his acceptance of it, he resigned the archbishopric on Nov. 27 and retired to Avignon. Pope Gregory XI advanced him to the title of Cardinal Bishop of Preneste, having first employed him in several negotiations in 1372 to mediate peace between the Kings of England and France, and the Earl of Flanders, during which he revisited his native country. In these treaties he is styled the Cardinal of Canterbury, and the King calls him his 'dear and faithful friend' (*N. Fœdera* iii, 932-970). It is certain that he retained so much of the royal favour as to be permitted to hold various preferments at this time in England. Besides a pre-

bend in the church of York, he was treasurer and archdeacon of Wells and dean of Lincoln, his filling the latter place while a cardinal, being the subject of a complaint to the parliament of April 1376, (*Rot. Parl.* ii, 339). It is stated that at this time he had applied for and procured permission to return to England; and that he projected the rebuilding of Westminster Abbey. But all his plans were frustrated by a paralytic stroke which occasioned his death on July 22, 1376. He was first buried in the church of the Carthusian monastery which he had founded in Avignon, and was three years afterwards removed to St. Benet's chapel in Westminster Abbey; where his tomb still remains. He was a man of great capacity, wise, affable, temperate and humble; and of his munificence we have evidence in his benefactions to Westminster." Foss's *Biogr. Jurid.*

<sup>428</sup> 2 *Const. Hist.*, ch. 16, p. 405.

<sup>429</sup> 1 *Stat. of the Realm*, 349; 1 *Statutes Revised*, ed. 1870, p. 198.

<sup>430</sup> 2 Stubbs's *Const. Hist.*, ch. 16, p. 405, *note*.

ute the first'—which, after recognition of the charters,<sup>431</sup> has besides other chapters,<sup>432</sup> the following :

XI. "It is accorded and assented that in case where a man dieth intestate, the ordinaries shall *depute the next and most lawful friends of the dead person intestate to administer his goods*;"<sup>433</sup> which deputies shall have an action to demand and recover as executors the debts due to the said person intestate in the King's court, for to administer and dispend for the soul of the dead; and shall answer also in the King's court to other to whom the said dead person was holden and bound, in the same manner as executors shall answer; and they shall be accountable to the ordinaries, as executors be in the case of a testament, as well of the time past as the time to come."<sup>434</sup>

Chapters two, three, eleven and fifteen are in 1 'Statutes Revised,' p. 198 to 200. Chapter 15 is noticed *ante* p. 299, ch. 15, note 95, in connection with ch. 35, of 9 Hen. III (Magna Charta). Chapter 12 is as follows:

"It is ordained and established that in all cases, touching the king or other persons, where a man complaineth of error made in process in the Exchequer, the *chancellor* and treasurer shall cause to come before them, in any chamber of council nigh the Exchequer, the record of the process out of the Exchequer, taking to them the justices and other sage persons, such as to them seemeth to be taken; and shall also cause to be called before them the barons of the Exchequer to hear their informations, and the causes of their judgments, and thereupon shall duly examine the business; and if any error be found, they shall correct and amend the rolls, and after send

<sup>431</sup> Ch. i. "That the Great Charter and the Charter of the Forest be firmly kept, holden, used and executed in all points." *Id.*

<sup>432</sup> ii. "Of the price of wools"; iii. "Discharge of estreats"; iv. "Extortion of Bishop's officers" on probates; v. "A tun of wine"; vi. "Fines from labourers"; vii. "Statute of labourers extended"; viii and ix. Of the "exportation of wool"; x. Of "sellers of victuals" in London; xiii. Of "pardon to the Commons" for escapes; and "grant to the king of a fifteenth"; xiv. Of "escapes of thieves, chattels of felons," &c.

<sup>433</sup> '*Deputer de plus prochains et plus loyals amis du mort intestat, pur administrer ses biens.*' That is the next of blood. *Hensloe's case*, 9 Rep. 39<sup>b</sup>; cited in 1843 by the Vice-chancellor of England (Sir *Lancelot Shadwell*) in *Cooper v. Denison*, 13 Sim. 295, 36 Eng. Ch. R.

<sup>434</sup> As to the state of things before and after this statute, see *Weston*, J. in 7 Eliz. in *Graysbrook v. Fox*, Plowd. 277, 278; *Hudson v. Hudson*, Forrester (Cas. Temp. Talb) 128; 2 Bl. Com., 494 to 496; 1 Hall. Mid. Ages, ch. 7, p. 405 of Phila. edi. 1824.

them into the Exchequer, for to make thereof execution as pertaineth."<sup>435</sup>

Parliament sat, in 1358, in February, from the 5th to the 27th;<sup>436</sup> in 1360, May 15; and in 1361, Jan. 24—Feb. 18.<sup>437</sup> This seems to be the parliament<sup>438</sup> which made a statute<sup>439</sup> with chapters as subjoined.<sup>440</sup>

41. *Of the parliament of 36 Edw. III (1362); the King's course then as to his sons. Of the statute then made; especially its broad provision as to remedy in chancery, and the chapter requiring that pleas shall be in the English tongue and be entered and enrolled in Latin.*

In 36 Edw. III (1362), the causes of the parliament called for '*Quindena Sancti Michaelis*,' and which sat from Octo. 13 to Nov. 17, was declared by Sir "*Henry de Green*, the King's Chief Justice, in the presence of the King, Lords and Commons."<sup>441</sup> The "petitions of the Commons, with their answers," embrace (besides other matters) the subjoined.<sup>442</sup>

<sup>435</sup> 1 Stat. of the Realm, 351. "An ordinance made concerning the selling of herrings" is called "Statute the second," and is in *Id.* p. 353 to 355. "An ordinance concerning the Salt Fish of Blakeny" is called "Statute the third," and is in *Id.* pp. 355, 356. "An ordinance made for the estate of the land of Ireland" is in *Id.* p. 357 to 364.

<sup>436</sup> Lord's Report i, 494, is cited in 2 Stubbs's Const. Hist., ch. 16, p. 405, note.

<sup>437</sup> *Id.*, p. 412, note 2.

<sup>438</sup> "The Sunday next before the feast of the conversion of St. Paul."

<sup>439</sup> 1 Stat. of the Realm, p. 364 to 369; 1 'Statutes Revised,' edi. 1870, p. 201 to 204.

<sup>440</sup> i. "That in every county of England shall be assigned for the keeping of the peace one Lord, and with him three or four of the most worthy in the county"; ii and iii. Of purveyance; iv. That panels of inquests shall be of the neighborhood; v and vi. Of weights and measures; vii. Of attainments; viii. Of

"proceedings against jurors taking reward to give their verdict"; ix, x and xi. Of Labourers; xii. "Seizure of lands on surmise of treason"; xiii. How an escheator shall take his inquests; xiv. As to traverse of the office and trial thereof; xv. Of alienations by tenants of Hen. III; xvi. Of "non-claim of fines"; xvii. Of "trade in Ireland"; xviii. Of English land-owners in Ireland"; xix. Custom for canvas to pack wool in; xx. Of "exportation of corn"; xxi. Confirming a grant to transport wool; xxii. That "stray hawks, &c., shall be carried to the sheriff."

In 35 Edw. III is "an ordinance of herring." 1 Stat. of the Realm, pp. 369, 370.

<sup>441</sup> 2 Cotton's Abr., p. 92 to 94; 2 Stubbs's Const. Hist., ch. 16, p. 412, note, and p. 414.

<sup>442</sup> No. 20. "That such as are imprisoned without due process of law may be delivered."

Ans. "The grieved upon com-



In this parliament 'statute the first,'<sup>443</sup> besides matters in chapters mentioned below,<sup>444</sup> contains the following broad provision:

IX. "If any man that feeleth himself grieved contrary to any of the *articles* above written, or others *contained in divers statutes*, will *come into the chancery*, or any for him, and thereof make his complaint, *he shall presently there have remedy*, by force of the said articles and statute, *without elsewhere pursuing* to have remedy."

In expounding c. 29 of Magna Charta, 9 Hen. III (mentioned in ch. 15 § 11, p. 294), Lord Coke deals with the question 'if a man be taken or committed to prison *contra legem terræ* (against the law of the land), what remedy hath the party grieved?' and in answer, cites 36 E. III, c. 9, saying, "it is provided and declared by the statute of 36 E. III, that if any man feeleth himself grieved, contrary to any article in any statute, he shall have present remedy in chancery (that is *by original writ*) by force of the said articles and statutes."<sup>445</sup>

plaint shall be heard."

21. "That manprize may be duly made to all persons, and fines to be duly rated according to the trespass."

Answ. "The statute therefore made shall be observed."

36. "The chancellor declared how that the king intended to advance to honour such of his sons as were of full age: Namely, that his son Lionel, then being in Ireland, should have the name of the Duke of Clarence, to him and to his heirs, males of his body, lawfully begotten; and that his son John should, in like manner, be Duke of Lancaster; and that his son Edmund should be Earl of Cambridge in fee."

37. "After which the king, in full parliament, did girt his son John with a sword, and set on his head a cap of fur, and upon the same a circlet of gold and pearls, and named him Duke of Lancaster, and thereof gave to him a charter."

38. "In like manner the king girded his son Edmund with a sword, and named him Earl of Cambridge, and thereof gave to him a charter."

Lionel, Duke of Clarence (who of the king's sons that survived childhood was *second*), was married *first* to Elizabeth, daughter and heiress of William de

Burgh, earl of Ulster, by whom he had only one child, a daughter, married to Edmund Mortimer, earl of March; secondly, to Violante, daughter of Galizazzo Visconti, of Milan, by whom he left no posterity. 2 Hume's Engl., ch. 16, p. 266, of N. Y. edi. 1850: 2 Stubbs's Const. Hist., ch. 16, p. 416.

The king's *third* surviving son John, born in the city of Gaunt, in Flanders, and known as John of Gaunt, had, in 1359, married his kinswoman Blanche, of Lancaster, who inherited four of the five earldoms of earl Thomas; to those John added the earldom of Richmond. *Id.* (2 Stubbs), p. 417.

<sup>443</sup> 1 Stat. of the Realm, p. 371 to 376; 1 'Statutes Revised,' p. 204 to 206, of edi. 1870.

<sup>444</sup> i. "Confirmation of the Great Charter," &c.; ii to vi. The blow "struck at the custom of purveyance," whereof Mr. Stubbs speaks in 2 Const. Hist., ch. 16, pp. 414, 415; vii. Of jurisdiction under the Statute of the Staple; viii. Of Priests. <sup>445</sup> 2 Inst., 55.

A provision (in ch. x) for a parliament every year, is followed by chapter xi, which mentions the late subsidy, and concludes thus:

"And that no subsidy, nor other charge, be set up nor granted upon the wools by the merchants nor by none other from henceforth, without the assent of the parliament." This limitation of the royal power is mentioned by Mr. Stubbs as marking "the growing tendency to deprive the crown, by very definite legislation, of its power of defying national sentiment and raising money by indirect evasions of the letter of the constitutional law."<sup>446</sup>

Other chapters<sup>447</sup> are followed by the fifteenth, which, after the subjoined recital,<sup>448</sup> ordained and established as follows:

"That all pleas which shall be pleaded in any courts whatsoever, before any of his justices whatsoever, or in his other places, or before any of his other ministers whatsoever, or in the courts and places of any other lords whatsoever, within the realm, shall be pleaded, shewed, defended, answered, debated and judged in the *English* tongue, and *that they be entered and enrolled in Latin*; and that the laws and customs of the same realm, terms and processes, be holden and kept as they be and have been before this time; and that by the ancient terms and forms of the declarations no man be prejudiced, so that the matter of the action be fully shewed in the declaration and in the writ."<sup>449</sup>

<sup>446</sup> 2 Stubbs's Const. Hist., ch. 16, p. 414.

<sup>447</sup> xii. Time for holding sessions of the peace; xiii. As to escheators and lands seized by inquest; xiv. As to fines of labourers, &c.

<sup>448</sup> "Because it is often showed to the king by the prelates, dukes, barons, and all the commonalty, of the great mischiefs which have happened to divers of the realm, because the laws, customs and statutes of this realm be not commonly known, holden and kept in the same realm, for that they be pleaded, showed and judged in the *French* tongue, which is much unknown in the said realm, so that the people which do implead, or be pleaded in the king's court, and in the courts of other, have no knowledge or understanding of that which is said for them or against them by their serjeants

and other pleaders; and that reasonably the said laws and customs the rather shall be perceived and known and better understood in the tongue used in the said realm, and by so much every man in the said realm may the better govern himself without offending of the law, and the better keep, save and defend his heritage and possessions, and in divers regions and countries, where the king, the nobles, and other of the said realm have been, good governance and full right is done to every person, because that their laws and customs be learned and used in the tongue of the country."

<sup>449</sup> It was then accorded that this statute begin at the 15th of St. Hilary next coming; after which is a statute as to a general pardon. 1 Stat. of the Realm, p. 376 to 378.

After mentioning that "the use of the English language in the courts of law was ordered in 1362,"<sup>450</sup> Mr. Stubbs makes the following statement:

"By the same act, although this was not petitioned for, it was ordered that records should be kept in Latin; and the use of French was thus excluded by law, although practice was, in this instance, much more powerful than statute, and French continued to be the legal language for some centuries."<sup>451</sup>

Supposing it to be a fact that "the record doth nothing warrant," the print in saying "*that all such pleas should be enrolled in Latin*,"<sup>452</sup> this tends to account for continued use of French in entries and enrollments for a considerable time.

42. *The chancellor's language in 37 Edw. III (1363), when opening parliament; and the legislation then.*

"The speech of the chancellor, in opening parliament in 1363, was delivered in English, forming a precedent which was frequently although not regularly followed."<sup>453</sup>

The parliament in 1363 (37 Edw. III) was at Westminster, and called for "the Friday in the Octaves of S. Michael." Having been continued by "Sir Henry Green, the King's Chief Justice," until Friday ensuing, declaration (as to the calling it) was on that day made by the "Bishop of Ely, then chancellor."<sup>454</sup> This parliament sat from Octo. 6 to Nov. 3.<sup>455</sup>

<sup>450</sup> "A concession made for the convenience of the commons: the period is that of the rise of the newer English literature of the middle ages; both bishops (like Thoresby) and reformers (like Wycliffe) were pressing the use of the native tongue in sermons and offices of devotion." 2 Stubbs's Const. Hist., ch. 16, p. 414. As to 'commissions in English' in the reign of Jac. I, see 12 Rep. 31; cited *post* in ch. 35, § 15.

<sup>451</sup> 2 Stubbs, 414.

<sup>452</sup> In Prynne's edition of Cotton's Abridgment, published at London in 1657, there is on p. 94 the following:

No. 39. "The print touching pleading in the English tongue, cap. 15, agreeth with the record; only where the print is, *that all such pleas should be enrolled in Latin*, the record doth nothing warrant the same."

<sup>453</sup> 2 Stubbs's Const. Hist., ch. 16, p. 414. "The speech in 1365 was in English; in 1377 apparently in French; in 1381 Courtenay preached in English (Rot. Parl. ii, 283; iii, 3, 98)." *Id.* p. 414, note 3.

<sup>454</sup> Cotton's Abr., p. 96.

<sup>455</sup> 2 Stubbs's Const. Hist., p. 412, note 2.

"The common law doth not prohibit any person from using several arts or mysteries at his pleasure, *nemo prohibetur plures negotiationes sive artes exercere*, until it was prohibited by act of parliament of 37 Edw. III, cap. 6."—"This restraint of trade and traffic was immediately found prejudicial to the commonwealth, and therefore at the next parliament it was enacted that all people should be as free as they were at any time before the said ordinance."<sup>456</sup>

"The parliament endeavoured by sumptuary laws prescribing the minutiae of diet and dress, to prevent the further impoverishment of the country, already desolated by the plague and exhausted by the war; attempts were made to bring the statute of labourers into operation by applying the fines which were to be raised under it to the relief of the charges on the commons."<sup>457</sup>

43. *Of the parliament in 38 Edw. III (1364-5), when the King himself made the speech which led to the enactment against the papal court. Provision for 'surety to pursue' a person's 'suggestion.'*

"In 1365 was passed a new statute of *præmunire*, definitely aimed against the jurisdiction of the papal court."<sup>458</sup>

In a note to this passage Mr. Stubbs adds: "The editors of the Parl. Hist. (i, 316) state that *Edward himself made the speech* which led to this enactment; this is *not mentioned in the roll itself*, which is the only authority."<sup>459</sup>

But in the "exact abridgment of the records in the Tower of London," it appears that in the "parliament holden at Westminster in the Octaves of S. Hillary," in 38 Edw. III (1364-5) proclamation was made "that all such as were summoned to the parliament might for that day depart, and return the next morning into the chamber *de pinct*; there to hear the king's pleasure; at which time Simon, bishop of Ely, chancellor of England, declared the cause of the parliament."

"The same day the King declared to the whole estate how daily citations and false suggestions were made to the pope, for matters determinable in his court, within the realm, and for procuring provision for ecclesiastical dignities, to the great defacing of the ancient laws, to the spoiling of his crown, to the daily conveying away of

<sup>456</sup> *Ipswich Tailors'* case, 11 Rep. 54 a.

<sup>457</sup> 2 Stubbs's Const. Hist., ch. 16, pp. 413, 414. The statute in 37 Edw. III, concerning diet and apparel, is in 1 Stat. of the Realm, p. 378 to 383; and 1 'Statutes Revised,' ed. 1870, p. 207.

<sup>458</sup> 1 Stat. of the Realm, p. 385 to 387; 1 'Statutes Revised,' ed. 1870, p. 208 to 214; Green's Hist. of Engl. Peop., book 4, ch. 3, pp. 444, 445 of vol. 1; 2 Stubbs's Const. Hist., ch. 16, p. 415.

<sup>459</sup> *Id.*, note 1.

the treasure, to the wasting of ecclesiastical livings, to the withdrawing of divine service, alms, hospitality and other acceptable works, and to the daily increase of all mischiefs, wherefore no person, &c.; and, *by his own mouth, the King requireth*, according to the old statute heretofore, to provide due remedy."<sup>460</sup>

"On Saturday after, the Bishops, Lords and Commons brought into the parliament the act following, named in the statute of confirmation, *ann.* 38, as a saving of the liberties of the bodies of prelates and Lords of the Realm.

The act of provisors agreeth with the print in all manner, cap. 1, 2, 3, 4, only in the record are more biting words; a mystery not to be known of all men."

The numbers which follow conclude thus:

31. "The seventeenth day of February, after that *the King, in the presence of the Lords and Commons*, had given his assent to all the above said premises, he *gave thanks to the whole estate*, and so licensed them to take their ease."<sup>461</sup>

44. *Of the parliament in 40 Edw. III (1366); especially of the writ of Ætate probanda, in the case of William Stevens, adjudged upon sight of him to be within age.*

In 1366, "the parliament, the bishops, lords and commons, unanimously repudiated the burden of papal superiority which had been undertaken by John, and refused to pay the tribute of 1,000 marks, which had been long in arrear, and now ceased altogether; even Peter's pence, the ancient Romescot, which dated from the days of Offa and Ethelwulf, was withheld for a time."<sup>462</sup>

This parliament began at Westminster in 40 Edw. III, "the Mon-

<sup>460</sup> Cotton's Abr., p. 100.

<sup>461</sup> *Id.*, pp. 100, 101. In 38 Edw. III are two ordinances; one called 'Statute the first,' in 1 Stat. of the Realm, p. 383 to 385; the other called 'Statute the second,' in *Id.*, pp. 385, 386.

In 17 Car. I (1641) in a petition of the Lords and Commons to the King is the following statement: "By the express laws and statutes of this your realm, that is to say, by two acts of parliament, the one made in the 37th and the other in the 38th year of the reign of your most noble progenitor King Edw. III, 'If any person whatsoever make

suggestion to the King himself of any crime committed by another, the same person ought to be sent, with the suggestion, before *the chancellor or keeper of the Great Seal*, the treasurer and the great council, there to find surety to pursue his suggestion; which if he cannot prove, he is to be imprisoned till he hath satisfied the party accused of his damages and slander, and made fine and ransom to the King." 4 State Tr., pp. 108, 109.

<sup>462</sup> 2 Stubbs's Const. Hist., ch. 16. p. 415; Green's Hist. of Engl. Peop., book 4, ch. 3, pp. 444, 445, of vol. 1.

day next after the *invention* of the cross";<sup>463</sup> the cause of this parliament was declared by "the bishop of Ely, then chancellor, in the chamber *de pinct*, in the presence of the Lords and Commons."<sup>464</sup>

"The parliament continued until Monday, the 11th of May." The chancellor then mentioned the marriage of the King's daughter, Isabella, to Lord Cowcy.<sup>465</sup> He was Ingelram de Cowcy, and became earl of Bedford. Subsequently was the marriage of Isabella's sister Mary, to John of Mountford, duke of Brittainy, and of her sister Margaret to John Hastings, earl of Pembroke.<sup>466</sup>

In the same parliament, "Sir *Thomas Ludlow*" (or Lodelowe), "Chief Baron of the Exchequer, shewed to the whole estate how William, the son and heir of William Stevens, who held diversely of the King in chief, as of the crown, had by writ of *æstate probanda*, sued out livery out of the King's hands, whereas the said William, the son, for long time should be within age, as by a long schedule may appear. Whereupon the whole estate, upon sight of the said William, the son, adjudged him to be within age; and therefore took order that all his hereditaments so sued out of the King's hands should be eftsoons reseized into the King's hands until his full age; and that all obligations, charters, statutes, recognizances and all other writings made by the said William, the son, should be void."<sup>467</sup>

45. *Appointments, from 1357 to 1377, of Judges of the Common Pleas.*

1359, July 11, *John de Moubray*.<sup>468</sup>

1359, October 25 (33 Edw. III), *William de Skipwith*.<sup>469</sup>

<sup>463</sup> The third of May is the day of the Festival of "*Inventio S. Crucis*"—the finding in or about 326 by St. Helena of the supposed cross.

<sup>464</sup> Cotton's Abr., pp. 102, 103.

<sup>465</sup> Cotton's Abr., p. 103, No. 13.

<sup>466</sup> 2 Hume's Engl., ch. 16, p. 266.

<sup>467</sup> Cotton's Abr., p. 103, Nos. 14 and 15. "This done, the king gave thanks to the whole estates, and licensed every one to depart; and so the parliament ended." *Id.*, No. 16. After No. 15, and before No. 16, are these words: "Note, the judgment is strange."

<sup>468</sup> Descended from Robert de Moubray, a younger brother of the ancestor

of Moubray, duke of Norfolk. He is described as of Kerklington, in Yorkshire; and, from 17 Edw. III, had very extensive practice as an advocate, attaining the rank of king's serjeant in 28 Edw. III. Soon after being raised to this bench, he was made a knight of the Bath. The fines acknowledged before him extend to 1373. Foss's Biogr. Jurid.

<sup>469</sup> Lineal descendent of Robert de Stuteville, whose younger son assumed the name in the reign of Henry III, from the lordship so called in Yorkshire, which he received as his position from his father. This Wil-

1361, September 30 (35 Edw. III), *John Knyvet*.<sup>470</sup>

1364, February 3 (38 Edw. III), *John de Delves*.<sup>471</sup>

1365, October 29 (39 Edw. III), *William de Fyncheden*.<sup>472</sup>

William was second son of another William, by Margaret, daughter of Ralph Fitz-Simon, lord of Ormsby, in Lincolnshire. William's father dying in 10 Edw. III, and his brother a few months afterwards, William then succeeded to the estates. It is said that he belonged to the society of Gray's Inn, and was the first reader there. His eminence as an advocate may be inferred from the frequent recurrence of his arguments in the Year Books from 17 Edw. III. In 28 Edw. III, he was appointed one of the king's serjeants. Soon after being raised to the Common Pleas he was created a knight. From this bench he was advanced in less than three years to be chief baron of the Exchequer. *Id.*

<sup>470</sup> A descendant of the ancient family of Knyvets, settled in England before the conquest. He was eldest son of Richard Knyvet, of Southwick, in Northamptonshire, custos of the forest of Clyve, by Johanna, daughter and heir of John Wurth, a Lincolnshire knight. In 21 Edw. III, he was practising as an advocate; in 31 Edw. III, he was called to the degree of the coif. In 1365, on October 3 (having been previously knighted), he was promoted to the office of chief justice of the King's Bench. Foss's Biogr. Jurid.

<sup>471</sup> Son of Richard de Delves, of Delves Hall, near Uttoxeter, in Staffordshire, who was constable of Heleigh Hall in that county. At the battle of Poitiers, in 1356, the Lord Audley, with his four Esquires, of whom *John de Delves* was one, performed such acts of valour, that Prince Edward granted to him on the field 'five hundred marks

of yearly revenues,' which the generous lord immediately resigned to his four Squires, saying that they had 'always served me truly, and specially this day; that honour that I have is by their valiantness.' And each of them was allowed to add a part of his lord's arms to his own. Soon afterwards *John de Delves* was knighted and retained in the service of the Black Prince. In 36 Edw. III, he is called his 'valettus' in an order to the sheriffs of London to supply him with as many bows and arrows as the prince should require; and he was contented with the wardship of the Duchess of Brittany. However natural it was that the royal good will should be extended to him, it seems strange that a place in the judicial bench should be selected as a reward for his military services, since there is no evidence that he had been ever previously connected with the law. Yet so it was. Two months after he became a judge of the Common Pleas, he accompanied the Black Prince to Gascony. Fines, however, appear to have been levied before him till the middle of the next year. As his name is not afterwards among the judges who received salaries, he probably then retired from the bench. He was so lucky as to announce to the king the birth of his grandson Edward, son of the Prince of Wales, and received therefor a grant of £40 a year. He lived till 1369, and was buried at Audley, in Staffordshire. *Id.*

<sup>472</sup> From 24 Edw. III an advocate (in the Year Books); in 36 Edw. III a king's serjeant; two years after a justice of assize. Foss's Biogr. Jurid.

1365, October 29 (39 Edw. III), *William de Wichingham*.<sup>473</sup>

1371, April 14, *William de Fyncheden*, advanced to the head of this bench.<sup>474</sup>

1371, November 27, *John de Cavendish*.<sup>475</sup>

1371, November 27 (45 Edw. III), *Roger de Meres*<sup>476</sup> (or *Roger de Kirketon*), who remained on this bench during the remainder of this reign.<sup>477</sup>

1374, October 10 (48 Edw. III), *Robert de Bealknap*<sup>478</sup> succeeded

<sup>473</sup> Probably son of William de Wichingham, M. P. for Norfolk in the reign of Edward II. He is mentioned as an advocate in 21 Edw. III at the assizes; but not till seven years after in the court at Westminster, he having, in the meantime, been employed as a justice to fix the wages of labourers in his native county. He appears as a justice of assize from 34 Edw. III; two years afterwards he was created a king's serjeant. He was in the Common Pleas from Octo. 29, 1365, till the end of the reign. *Id.*

<sup>474</sup> It does not appear whether it was his death or his retirement that caused the appointment of his successor Octo. 10, 1374. *Id.*

<sup>475</sup> Son of Roger, who was grandson of Ralph de Gernum, a justice itinerant in the reign of Henry III. The name of Cavendish was first assumed by either his father or himself; each being said to have acquired it by marriage with the heiress of the lord of the manor so called in Suffolk county. John de Cavendish appears in the Year Books as an advocate as early as 21 Edw. III, and as late as 45 Edw. III. and was made a serjeant in 40 Edw. III. From 40 to 44 Edw. III he was in commission as a judge of assize, his salary for which was £20 a year. Fines were levied before him as a judge of the Common Pleas at the commencement of 46 Edw. III. *Id.*

<sup>476</sup> Of a Lincolnshire family, established at Kirketon in the district of Holland; Roger de Meres was appointed one of the king's serjeants in 40 Edw. III. He had property in Kirketon, and may have been the same with Roger de Kirketon; it being then quite common for a man to call himself after his estate. In the Year Books the name of Meres does not occur, while Roger de Kirketon's arguments as an advocate extend from 28 to 45 Edw. III. Though Roger de Kirketon is not mentioned as a serjeant, or in any other way, in the Issue Roll of 44 Edw. III, yet payments are made to Roger de Meres both as a serjeant and a judge of assize. Foss's *Biogr. Jurid.*

<sup>477</sup> There is no record of any fines being levied before Roger de Meres. Dugdale introduces Kirketon (without giving the date of his appointment) from a fine acknowledged before him in Feb., 1372. Roger de Meres appears as a trier of petitions in the parliament of that year, and his name then stops; in the succeeding parliaments of the reign Roger de Kirketon is named instead of him. *Id.*

<sup>478</sup> Had considerable possessions in Kent county before he could have acquired them from the profits of his profession. The names of his parents were John and Alice. Probably his father was a lawyer, as an advocate of that



*William de Fyncheden* as Chief Justice.<sup>479</sup>

1374, November 28, *Roger de Fulthorpe*.<sup>480</sup>

46. *Of William de Skipwith and others, chief barons of the Exchequer from 1362 till 1377.*

*William de Skipwith* was, in 1362, advanced from the Common Pleas to be chief baron of the Exchequer, and remained in this office till October 29, 1365,<sup>481</sup> when he was succeeded by *Thomas de Lodelowe*.<sup>482</sup>

name appears in the Year Book of 20 Edw. III. Robert's career in the courts commences in 36 Edw. III; in 40 Edw. III, he became a king's serjeant; he had one salary of £20 a year therefor, and another of the same amount as a justice of assize; a duty which he frequently performed till his elevation to the bench at Westminster; three months before which he was sent to treat with the pope's nuncios as to the famous John Wycliffe. Foss's Biogr. Jurid.

<sup>479</sup> *Id.*

<sup>480</sup> Second son of Alan de Fulthorpe, of Fulthorpe, in Durham county, where the family had been settled for several generations. He began as an advocate about 34 Edw. III (1366), and was, in 39 Edw. III, made a king's serjeant. In 47 Edw. III, he was one of three commissioners to hear and determine the dispute between Henry Lord Percy and William Douglas respecting the custody of the marches of the kingdom of England, near Scotland. Foss's Biogr. Jurid.

<sup>481</sup> Then he, and Sir *Henry Green*, the chief justice of the King's Bench (who was deprived of his place on the same day), were imprisoned for alleged enormities, which the king *understood* they had committed, and it is said that they did not get their discharge until they had paid large sums of money, which the king thought they had unjustly acquired. The fact that on Feb. 15, 1370 (44 Edw. III) a Sir *William de*

*Skipwith* was constituted chief justice of the King's Bench in Ireland, and that on the 21st the sum of £26 13s. 4d., or 40 marks was paid to him for his expenses and equipment in going there—showing, therefore, that he went from England—it is with great reason said, “is easily reconciled to the supposition, that King Edward having satisfied himself that the charges against him were unfounded, restored the victim of his haste, as he did on several other occasions, to his judicial functions on the first opportunity;” and the Sir William, so appointed chief justice, is therefore regarded as the same person who was removed from the office of chief baron in 1365, and the same person who was, in 1376, restored to the position of justice of the Common Pleas in England. Foss's Biogr. Jurid.

<sup>482</sup> Of one of the three families of the name of Lodelowe (Ludlow), which flourished in the reign of Edw. II: two thereof sent members to parliament respectively for Shropshire and Surrey; the third held the manor of Campedene in Gloucestershire. Thomas appears to have been established in Kent, as he was, in 33 Edw. III, one of the commissioners for keeping the peace in that county, and, in 46 Edw. III, among the custodes of the seashore there. While an alderman of London, in 1353, he was elected recorder of that city; he held that office till Octo. 29, 1365. Foss's Biogr. Jurid.

It may be seen in the preceding section that Sir *Thomas Ludlow* (or *Lodelowe*) was acting as chief baron in the parliament of 40 Edw. III (1366). According to Mr. Foss, he acted as a trier of petitions in all the parliaments from Octo. 29, 1365, till 47 Edw. III, when probably his death occurred.<sup>483</sup>

*William Tank*<sup>484</sup> was constituted chief baron February 3, 1379<sup>485</sup> (48 Edw. III), and was succeeded by *Henry de Asty*,<sup>486</sup> November 12, 1375.<sup>487</sup>

47. *Appointments, from 1357 to 1377, of judges of the Exchequer other than the Chief Baron.*

1362 (36 Edw. III), *Robert de Pleste*.<sup>488</sup>

1365, October 29 (39 Edw. III), *Almaric de Shirland*, made second baron.<sup>489</sup>

1365, November 3, (39 Edw. III), *John de Stokes*.<sup>490</sup>

1373, October 26 (47 Edw. III), *William Gunthorp*.<sup>491</sup>

1373, October 26, *John de Blockley*.<sup>492</sup>

<sup>483</sup> During this period he is several times mentioned in the year books as a justice of assize. Biogr. Jurid.

<sup>484</sup> An advocate in the Year Books from 20 Edw. III. It is probable that he was settled in Sussex county. Foss's Biogr. Jurid.

<sup>485</sup> During the short period that he presided in the court, he acted as a judge of assize. There are two instances of grants to him of the custody of lands in Sussex county, pending the heir's minority. *Id.*

<sup>486</sup> Connected with Lincoln county; therein he held the manor of Burwell and the advowson of the priory there, paying to the king an annual rent of 100 marks. *Id.*

<sup>487</sup> He continued in the office during the remainder of this reign and some years of the next. *Id.*

<sup>488</sup> Foss's Biogr. Jurid.

<sup>489</sup> In 44 Edw. III he was sent into

Lincolnshire and three neighboring counties to borrow money for the king's use. In 45 Edw. III there was a conveyance to him of the manor of Mutford in Suffolk. *Id.*

<sup>490</sup> Perhaps son of Ralph de Stokes who in the reign of Edw. II was a clerk of the great wardrobe. In 44 Edw. III sent into Yorkshire and Northumberland to obtain loans for the king; and to survey the alien priories. *Id.*

<sup>491</sup> Described as 'clericus.' He probably had an office in the treasury or exchequer before he received the appointment of treasurer of Calais on March 20, 1368, (42 Edw. III). This place he held till Oct. 26, 1373. Foss's Biogr. Jurid.

<sup>492</sup> Probably born in the parish of Blockley in Worcestershire. With some of his lands there he endowed the chantry of the church of St. Mary in 30 Edw. III, and subsequent years. In 44 Edw.

1375, September 27, *Laurence de Allerthorpe*.<sup>403</sup>

1375, October 5, *Henry de Percehay*<sup>404</sup> (or Percy), made a baron.

1376, November 14 (50 Edw. III), *Nicholas de Drayton*.<sup>405</sup>

48. *Of William de Shareshull, Thomas de Setone, Henry Green John Knyvet and John de Cavendish, Chief Justices of the King's Bench from 1350 till the end of the reign; and of Thomas de Ingleby, who for many years was the only judge of this court besides the Chief Justice.*

In 1357, on July 5, *William de Shareshull* retired from the head of the King's Bench,<sup>406</sup> and was succeeded by *Thomas de Setone*.<sup>407</sup>

III he was an auditor of the Exchequer with a salary of £10 a year; and he received an annual pension of 20 marks for services to the king and his late queen; besides which he had a grant of the custody of the manor of Exhulne in Warwickshire during the heir's minority. Like many other officers he was in holy orders. He was a baron from 47 Edw. III till the last year of the king's reign. *Id.*

<sup>403</sup> Derived his surname from the village in Yorkshire so called. His early life was spent as a clerk in the Exchequer. In 1370 he was an auditor of that department, receiving £10 a year for his salary, together with 60 shillings for his expenses in going into the northern counties to affect amercements. An ecclesiastic, like other of his brethren, he obtained a canonry in St. Paul's. He was on the Exchequer bench during the remainder of the reign. *Id.*

<sup>404</sup> Probably son of William and Isabella Percehay, the possessors of Lewesham and other manors in Yorkshire and Lincolnshire. From 39 Edw. III he was one of the king's serjeants; he was occasionally employed as a justice of assize. He was on the Exchequer bench during the rest of the reign. *Id.*

<sup>405</sup> An ecclesiastic; probably son or nephew of Thomas de Brayton, some-

times called de Drayton, (mentioned in § 23, pp. 570, 571). On December 1, 1363, he was appointed custos of the scholars, supported by the royal bounty at the Aula Regis in Cambridge (*N. Fædera* iii, 717). A few years afterwards he was a disciple of John Wickliffe, and had the greater excommunication fulminated against him by Sudbury, bishop of London, for promulgating what Sudbury considered against articles of Catholic faith. Foss's Biogr. Jurid.

<sup>406</sup> While holding the office of chief justice, he declared the causes of the meeting of five parliaments from 25 to 29 Edw. III (Rot. Parl. ii, 226-264). But he is seldom mentioned in the Year Books. Having pronounced a judgment against the bishop of Ely for harbouring one of his people who had slain a man of Lady Wake's, he was in the last year of his judicial career, excommunicated by the pope for not appearing when summoned. (Barnes's Edw. III, 551). But he still retained the royal favour. In Clarke's 'Ipswich,' p. 14, it is related that at that town, some sailors thinking he stayed too long at dinner, one of them mounted on the bench and fined the judge for not appearing. He took such offence at this joke that he induced the king not only to take away the assizes from the town, but also to

From the day of appointing the successor of *Thomas de Setone* in the office of chief justice of the King's Bench, whether it was May 24, 1360,<sup>498</sup> or May 24, 1361,<sup>499</sup> *Henry Green*, as such successor, held this office until October 29, 1365, when he was removed therefrom. If there was not only against *William Skipwith*, but also against *Henry Green*, such a charge as is mentioned in § 46, p. 613 *n*, it is curious that in the warrant directing the latter to give over the rolls, &c., to his successor, the king should call him '*dilectus et fidelis*'; and that in a case in Richard Bellewe's reports, he should be referred to as the 'wise justice.'<sup>500</sup>

In 1365, on Octo. 29, *John Knyvet* (having been previously knighted) was promoted<sup>501</sup> to the office of chief justice of the King's Bench.<sup>502</sup>

In 1372, after Sir<sup>503</sup> *John Knyvet* was elevated to the chancellorship, *John de Cavendish* was raised (July 15) to the chief justiceship of the King's Bench. The language of this Chief Justice—when the

seize into his own hands the liberties of the corporation, which he held for about a year. He appears in confidential positions as late as 34 Edw. III (N. Fœdera III, 457, 469.) He lived beyond 37 Edw. III. In this year he granted his manor of Alurynton in Gloucestershire to the abbot and convent of Oseney, in addition to lands at Sandford in Oxfordshire, which he had given six years before. He was a benefactor also to the convents of Bruera and Dudley. Foss's Biogr. Jurid.

<sup>497</sup> Mr. Foss says: "It would seem from the words '*ad tempus*' in the mandate, that it was at that time a mere temporary appointment; and from the fact that his name appears on fines up to midsummer, 33 Edw. III, we may infer that he acted up to that date as a judge of the Common Pleas also, especially as in the same year he is designated by the latter title, when he was admitted of the king's secret council. Thus it was not till afterwards that he was permanently

fixed in the presidency of the King's Bench; but there is no doubt that he then held it till the 38th year, when on May 24, 1360, *Henry Green* was appointed his successor." Biogr. Jurid.

<sup>498</sup> As stated in the article concerning *Thomas de Setone*, pp. 607, 608, of Foss's Biogr. Jurid.

<sup>499</sup> As stated in the article concerning *Henry Green*, p. 310, of same volume.

<sup>500</sup> That he was not much damnified by any fine imposed upon him is apparent from his possessing at the time of his death, in 1369, besides a mansion in Silver street, Cripplegate, London, numerous manors and other lands in the counties of Northampton, Leicester, York, Hertford, Bedford, Buckingham and Nottingham. His son, Thomas, enjoyed the same property till his death, in 1391-2. *Id.*

<sup>501</sup> From the Common Pleas. *Id.*

<sup>502</sup> *Id.*

<sup>503</sup> A trier of petitions in every parliament from 1372. *Id.*

question was as to a lady's age, and her counsel pressed the court to have her before them and judge by inspection—has been cited as showing him to have been a bit of an humourist:

*'Il n' ad nul home en Engleterre que puy adjudge a droit deins age ou de plein age; car ascun femes que sont de age de xxx ans voilent apperer d' age de xviii ans.'*<sup>504</sup>

He continued to fulfil his high duties with great credit till the end of the reign.

*Thomas de Ingleby*<sup>505</sup> was appointed a judge of the King's Bench September 30, 1361 (35 Edw. III) and retained his seat therein for the sixteen remaining years of the reign, being, during most of them, *the only judge there in addition to the chief justice*. To him was granted £40 a year beyond his stated judicial salary of 40 marks; and besides this, he had a fee of £20 annually for holding assizes in different counties.<sup>506</sup>

49. *Proceedings of parliament in 42 Edw. III (1368); especially those against Sir John de Lee.*

The cause of the parliament holden at Westminster in 42 Edw. III, "Monday, the first day of May" (1368),<sup>507</sup> was by the archbishop of Canterbury,<sup>508</sup> declared, "in the presence of the King, Lords and Commons." In Cotton's Abr., p. 105 to 107, besides other matters, the following are under the caption, "Petitions of the Commons with their answers":

No. 12. "The print that none be put to answer without due process of law, cap. 3, agreeth with the record."

20. "The 21st of May the King gave thanks to the Lords and Commons for their coming, and aid granted; on which day all the Lords and sundry of the Commons dined with the King; after

<sup>504</sup> Year Book, 50 Edw. III, fo. 6, pl. 12; cited in Foss's Biogr. Jurid., p. 160.

<sup>505</sup> In 21 Edw. III (1347), settled at Ripley, in Yorkshire; in 25 Edw. III, a judge of assize. Foss's Biogr. Jurid.

<sup>506</sup> *Id.*

<sup>507</sup> Cotton's Abr., 105; 1 Stat. of the Realm, 168; 2 Stubbs's Const. Hist., p. 412, note 2.

<sup>508</sup> Although *Simon de Langham* resigned the Great Seal in 1366 or 1367, yet he was still archbishop of Canterbury in May, 1368.

which dinner Sir *John de Lee* was brought before the King, Lords and Commons."<sup>509</sup>

The statute made at Westminster on the first day of May, in 42 Edw. III (1368),<sup>510</sup> embraces the chapters mentioned below.<sup>511</sup>

<sup>509</sup> "The king had granted the wardship of Robert Latimer, the son and heir of Sir Robert Latimer, with certain manors, during the same minority, to the bishop of Sarum, whose estate the same William had, and after the king granted the same to Sir John Lee. The same William surmised that the said Sir John, being of power, sent for him to London, when he, by duress of imprisonment, enforced the said William to surrender his estate to him. And, by recognizance therefore, the same Sir John excuseth himself, for that the grant was made unto him, the which was not allowed, *for that the said William was not put out by due process of law.*"

"Another matter was objected against the said Sir John, for that during such time as he was steward of the king's house he should cause sundry men to be attached and to come before him, as before the king's council in places where he pleased, where, being out of council, he caused men to answer as to things before the council; that he, as steward, having thereby authority only within the virge, did, notwithstanding, cause sundry to be attached out of the virge, as John Goddard, and others, making them to answer in the marshalsay of things done out of the virge, and other—some committed to the Tower of his own authority, as John Sibell, Edmond Urdsales, and others; that he had of his own authority, against the justices' commandment, discharged out of Newgate Hugh Lavenham, purveyor, who had appealed sundry men of felony; that he bargained with Sir Nicholas Lovayn for the keeping of the manor of Rainham, in Kent, the which the same Sir Nicholas claimed to

hold during the minority of the son and heir of John Saunton, where the said John, of Lee, knew that the said manor was holden of the king-in-chief, as of the castle at Dover.

"Of all which points, for that the same Sir John could not purge himself, he was commanded to the Tower of London, there to remain as prisoner until he had made fines at the king's will. And commandment given to Sir Allen, of Buxhal, constable of the Tower, to keep him accordingly. And so the Lords and Commons departed."

"After that, the said Sir John being brought to Westminster before the king's council, and being there demanded of the same William Latimer, made answer, that as freely as the king had granted to him the wardship aforesaid, so freely did he surrender the same into the king's hands. Whereupon, by the same council, it was ordered that the wardship aforesaid should be rezeized into the king's hands and delivered unto the said William Latimer, according to the grant made to the said bishop, and that all recognizances and conveyances made by the said William to the said Sir John should be void, saving the king's right." Cotton's Abr., pp. 106, 107.

<sup>510</sup> 1 Stat. of the Realm, p. 388 to 390; 1 'Statutes Revised,' edi. 1870, p. 214 to 216.

<sup>511</sup> i. Of the charters; ii. Of the pardon granted in 36 Edw. III; iii. "That no man be put to answer without presentment before justices or matter of record, or by due process and writ original according to the old law of the land"; iv. As to commissioners of enquiry; v. Of escheators; vi. Of the statute of la-

Amongst the records of Mich. T., 42 Edw. III, was an appeal of robbery by Helena, *filia* Hugonis Allot and *quia eadem Helena pregnant fuit et in periculo mortis*, she was let out *upon mainprise*.<sup>512</sup>

50. *Of William of Wykeham, who, in 1367, succeeded William de Edington as bishop of Winchester, and succeeded Simon de Langham as Chancellor of England. His lucid speeches in parliament contrasted with addresses of his predecessors.*

Fuller states that William was son of John Perot and Sibel, his wife; that he has erected over their graves a chapel at Titchfield, in Hampshire county; and that he (William) was called *Long*, from the height of his stature.<sup>513</sup> Others mention his father and mother as John and Sybil *Longe*, and that they were of good reputation and character.<sup>514</sup> Wykeham or *Wickham*<sup>515</sup> was the place of the birth (in 1324, between July and September)<sup>516</sup> of William, whose parents were not sufficiently prosperous in their circumstances to advance his education, and who (according to tradition) was sent to school at Winchester by *Nicholas de Uvedale*, lord of the manor of Wykeham, and governor of Winchester castle.<sup>517</sup>

*William of Wykeham* acted as the governor's secretary, and by his recommendation was soon noticed by *William de Edington*, bishop of Winchester,<sup>518</sup> by and through whom Wykeham's archi-

boursers; vii. Of Londoners, selling at retail; viii. Of Englishmen passing into Gascoigne to fetch wines; ix. Of levy-ing the king's debts, and that no sheriff, under sheriff nor sheriff's clerk, shall abide in his office above one year; x. Of children born abroad; xi. Of retaining names of jurors.

<sup>512</sup> 12 Rep., 125.

<sup>513</sup> 2 Fuller's Worthies, ed. 1840, p. 8.

<sup>514</sup> "His mother was of gentle extraction, being the daughter of William Bowade, whose wife was daughter of William and Amicia Stratton, of Stratton, near Selborne. They and his sister were buried in the church of Suthwyk Priory, not far from Wykeham (Archæol. Journ. iii, 221). Foss's Biogr. Jurid.

<sup>515</sup> In Hants county, about 4 miles from Bishop's Waltham, 9 from Portsmouth, 11 from Southampton, and 69 from London.

<sup>516</sup> Fuller *ub. sup.*; Dugdale's Engl. tit. *Wickham*.

<sup>517</sup> Foss's Biogr. Jurid.

<sup>518</sup> Owing probably to the bishop, there was a beneficial grant to Wykeham in 1350 of the custody of the manor of Rokeford in his native county, at a small annual rent, until the heir of Sir *William Bottreux* attained his majority, (Abb. Rot., Orig. ii, 209); Wykeham was in 1352 the bishop's attorney in taking possession of certain lands; and it is suggested that he probably assisted in the erection of the great tower at

lectual talents were availed of. After many employments of different kinds, he became, in 1367, the successor of William de Edington,

Windsor Castle, called the *Tabula Rotunda*. In 1356, on May 10, he was made "clerk of all the king's works in his manors of Henle and Yestampsted." On August 20 he is allowed £2 10s. for the keep of the king's eight dogs at Windsor for nine weeks, taking for each dog three farthings a day and two pence a day for a boy to keep them. (Pell Records iii, 163). October 30 he was appointed "Surveyor of the King's works in the castle and park of Windsor," with power to press artificers and provide materials and carriages, and with the then liberal payment of two shillings a day besides extra allowances. In the next year the sale of all the beasts in Windsor park was committed to him and two other persons (*Id.* 244); and in 1354 he had another royal patent constituting him chief custos and supervisor of the castles of Windsor and Leeds, and of the manors and parks belonging thereto. During this period he projected and accomplished splendid works at Windsor Castle, which continue to give celebrity to his name. Queenborough Castle, which was erected under his direction between 1361 and 1367, and showed his extraordinary skill and abilities as an architect, no longer exists as an example of them.

Other qualifications suggested Wykeham's employment in important offices both lay and ecclesiastical; he is called '*clericus*' as early as 1352; and in 1359 the king describes him as '*clericum suum*'; he received in succession, from the king's presentation, the rectory of Pulham in Norfolk in 1357; the prebend of Flixton in Lichfield Cathedral in 1359; and in the next year the deanery of St. Martin's-le-Grand in London. The latter he retained for three years,

during which he gave proof of his liberality by rebuilding the cloisters of the chapter house and the body of the church (*Monasticon* vi, 1323.) In 1362 he was ordained sub-deacon March 12, and priest June 12. In 1363 he became archdeacon of Northampton which he exchanged for that of Lincoln; according to Le Neve (156, 162, 167) he was also archdeacon of Buckingham. He received other prebends and livings of which there is a list in a certificate delivered in Octo. 1366, by virtue of the pope's bull requiring a return of all pluralities. The value of the whole is stated to have amounted to £873, 6s. 8d., a very large provision in those days; though it may be that he only received revenues of the church with one hand to expend them in her service with the other.

He had been appointed, in 1361, custos of the forests, south of the Trent, in conjunction with *Peter Attewode* (Abb. Rot., Orig. ii, 263); and in 1364, on April 2, is described as holding the office of keeper of the Privy Seal. (Pell Records iii, 182.) In 1365 he was one of the commissioners to treat of the ransom of the king of Scotland, and the prolongation of the truce with that country. His influence with the king is evidenced by records of his presence in the king's council, and, by the expression of Froissart, that at this time 'everything was done by him, and nothing was done without him.' But though the pope addresses him in June, 1364, as the king's secretary, Mr. Foss thinks "he did not fill that position till two years afterwards, holding it with the Privy Seal" till he was appointed chancellor. Foss's *Biogr.*, Jurid.



as bishop of Winchester, and of Simon de Langham, as chancellor of England.<sup>519</sup> He held the chancellorship for three years and a half.

His speeches on opening parliament were distinguished by his departing from the habit, which his predecessors had, of making quotations from scripture in their addresses—and by his confining his, in a business-like and judicious manner to a clear statement of the emergencies of the state and a lucid exposition of the subjects of the meeting.<sup>520</sup>

51. *Proceedings of parliament in 43 Edw. III (1369). How the Great Seal was laid up; and another engraven with the style of France.*

The causes of the parliament holden at Westminster in 43 Edw. III (1369), "in the Octaves of St. Trinity" (June 3-11), were declared by "the bishop of Winchester, chancellor of England," "in the Chamber *de Pinet*, in the presence of the King, Lords and Commons." In concluding his discourse, the chancellor stated that "the Prince of Gascoyne, upon consultation with his nobles and wise men, had willed the king to write and use the style of France."

No. 8. "On Wednesday after, the Bishops, Lords and Commons answered the King, that with good conscience he might use the style and name of France; and thereto they gave their assent."

9. "Whereupon the King took the same style and name upon him."

14. "It is agreed that no man be punished contrary to the statute."

25. "The next day, being the tenth of June, the King gave thanks to the Lords and Commons for their great travels and aid."<sup>521</sup>

<sup>519</sup> Mr. Foss says of Langham: "On July 22, 1366, he was translated to Canterbury by papal provision, and about the same time resigned the Great Seal. Biogr. Jurid." The precise date of Wykeham's appointment does not appear; but, in 1367, on Sept. 16, he is so called in a grant of free warren to Archbishop Islip. *Id.*

<sup>520</sup> Foss's Biogr. Jurid.

<sup>521</sup> Cotton's Abr., p. 108 to 110. "The

eleventh day of June the king's Great Seal was safely laid up, and another seal engraven with the style of France, was taken and used, and sundry patents, charters and writs therewith sealed. And the same day were all other, the king's seals, in like sort changed." *Id.*, pp. 108, 109. The statute made in this parliament (43 Edw. III) is in 1 Stat. of the Realm, p. 390 to 392.

The Queen (Philippa of Hainault) died this year (1369) and was buried at Westminster.<sup>522</sup>

52. *Parliament in 45 Edw. III (1370-71); opened by William of Wykeham as chancellor. Petition to it that laymen, and none of the clergy, may be the principal officers. Accordingly the king makes changes in some of the high offices; William of Wykeham being succeeded as chancellor by Sir Robert Thorpe, and Bishop Brantingham being succeeded as treasurer by Richard le Scrope. Of the period of Sir Robert's chancellorship. In whose custody the Great Seal was during his temporary absence. William de Burstall Master of the Rolls in 1371. On Sir Robert Thorpe's death, in 1372, Sir John Knyvet, Chief Justice of England, was made Lord Chancellor. Mention of cases in which he took part. Though wise and discreet, he was substituted in Jan. 1376-7 by Adam de Houghton, bishop of St. David's.*

At Westminster, in 45 Edw. III (1371),

"The parliament met on the 24th of February<sup>523</sup> in the Painted Chamber; Edward himself was present, with *William of Wykeham* as chancellor, and Bishop Brantingham of Exeter as treasurer. The chancellor opened the proceedings with a speech."<sup>524</sup>

Part of the statute of 45 Edw. III is retained in 1 'Revised Statutes,' edi. 1870, pp. 216, 217. Among the petitions of the Commons was this:

15. "For that the realm had been of long time governed by men of the church, in disherison of the Crown, the Lords and Commons required that Lay men only may be principal officers of the King's courts and house there particularly named, and that none of the clergy be; saving to the King his free election to choose, and remove such officers, so as they be Lay."

*Ans.* "The King will therein do by the advice of his Council."<sup>525</sup>

During the session—which was 'Feb. 24-Mar. 29'<sup>526</sup>—there was, in accordance with the petition, a change in some of the high offices:

<sup>522</sup> 4 Lingard's Engl., ch. 2, p. 105.

<sup>523</sup> The Monday in the first week of Lent. Cotton's Abr., p. 111; 1 Stat. of the Realm, 393; 2 Stubbs's Const. Hist., ch. 16, p. 420.

<sup>524</sup> *Id.* "In the presence of the King, Lords and Commons." Cotton's Abr., p. 111.

<sup>525</sup> *Id.*, p. 112; 4 Inst., 79.

<sup>526</sup> 2 Stubbs, p. 420, note 2.

*William of Wykeham*, on the 24th of March, resigned the Great Seal, and Bishop *Brantingham*, on the 27th, quitted the treasury. Their successors were appointed by the King immediately. "Sir *Robert Thorpe*, Chief Justice of the Common Pleas" (mentioned in § 37, p. 597), "a man of singular judgment in the laws of" the "realm, was constituted Lord Chancellor of England," March 26 (1371);<sup>527</sup> Sir *Richard le Scrope*<sup>528</sup> was invested with the office of treasurer on the 27th.<sup>529</sup>

Sir *Robert Thorpe* was in parliament, as "the chancellor" both before and after its recess; as appears from the subjoined proceedings.<sup>530</sup>

<sup>527</sup> 2 Stubbs's Const. Hist., ch. 16, pp. 421, 422; 4 Inst., 79; Foss's Biogr. Jurid.

<sup>528</sup> In 1336 (10 Edw. III), at the death of Sir *Henry le Scrope* (mentioned in § 12, p. 553), Richard, the youngest of his sons, and ultimate heir to his extensive property, was about eight years old. Devoting himself to arms, he was only eighteen when he accompanied the king in his invasion of France. In 1346, on August 20, he was in the battle of Cressy; in Scotland, in October, he so signalized himself at the battle of Nevil's cross as to be knighted on the field; yet during that, and part of the next year, he assisted at the siege of Calais, which surrendered to Edw. III, August 4, 1347. He was, in 1350, in the sea-fight near Rye, when Don Carlos de la Cerda was defeated by King Edward and the Black Prince; and in succeeding years was in the army of his sovereign, both in the French and Scottish wars. In 1359 began his connection with John of Gaunt, earl of Richmond, which lasted the remainder of the life of that celebrated man, serving under him in the army which then invaded France (*N. Fædera* iii, 412), and made its way almost to the walls of Paris. By his own county of York he was selected as its representative in parliament in 1364, during the progress of

his military career. In 1366 he accompanied his patron, who had been created Duke of Lancaster into Spain, and in April of the next year distinguished himself at the victory of Najarre, which restored Don Pedro to the Spanish throne. In 1369, on the renewal of war with France, he was in his usual place, by the duke's side. In 1371, on Jan. 8, he was summoned to the upper house as a baron. Foss's Biogr. Jurid.

<sup>529</sup> He retained the treasurership for four years and a half, retiring in September, 1375; but during the interval, in July, 1373, he again formed part of the Duke of Lancaster's retinue into France; and in March, 1375, was joined with Sir John Knyvet to act as attorney for the duke during his absence from England. In the last year of Edward's reign he was one of the commissioners for the preservation of the truce with Scotland and for the protection of the Marches. *Id.*

<sup>530</sup> No. 8. "Sir *Robert Thorpe*, the chancellor, declared that forasmuch as Easter approached, their petitions could not be answered; but after the same feast the King would appoint certain to answer them."

9. "After this the King gave thanks to the Lords and Commons for their travel and aid; and licensed them to

In March 1371, during the chancellor's temporary absence, the Great Seal was in custody of four clerks, or masters in chancery. *Walter Power*<sup>531</sup> was their head.<sup>532</sup> *William de Burstall* is the second named.<sup>533</sup> The third was *William de Mirfield*.<sup>534</sup> The last of the four was *Nicholas de Spaigne*.<sup>535</sup>

*William de Burstall* became Master of the Rolls March 28, 1371. During his time the *Doinus Conversorum* in Chancery lane (mentioned in § 17, p. 560, note 198) was annexed by Edward III to the office of Master of the Rolls.<sup>536</sup>

Although Sir *Robert Thorpe* "was made chancellor 26 Martii, 45 E. III," yet (Lord Coke says) "in Michaelmas term following, he sate in the court of Common Pleas and spoke to matters in law, Mich. 45 E. III, fol. 12<sup>b</sup>, Trin., 45 E. III, 19, 22, 23<sup>b</sup>, 24, 25, 26, 27, 28; *William de Finchden* then being chief justice of the court of Common Pleas."<sup>537</sup>

Sir Robert had the chancellorship little more than a year, his death depart."

10. "After the great council summoned and holden at Winchester at the Utaves of Trinity then ensuing, the chancellor declared to the Lords and Commons there assembled, how," &c.

13. "The petitions of the Commons, not before answered, were now read and answered before the King, Lords and Commons; which done, the King licensed the estates to depart; and the parliament ended." Cotton's Abr., pp. III, 112.

<sup>531</sup>In 1336, in the office of attorney-general to John of Gaunt, Duke of Lancaster; in 20 Edw. III, one of the commissioners of array for the counties of Bedford and Buckingham. He held the manor of Brereby and other property in Yorkshire, part of which he gave to the prior of the convent of Monk Bretton. He was a clerk or master in chancery from 25 to 47 Edw. III (1351-1373). Foss's Biogr. Jurid.

<sup>532</sup>*Id.*

<sup>533</sup>*Id.*

<sup>534</sup>A clerk or master in chancery from 36 to 49 Edw. III (1362-1375), when he died. He was of a Yorkshire family and held the rectory of Bradford. On his death, his property was divided among his sisters. *Id.*

<sup>535</sup>He also seems to have been connected with York county. He was in 1371 and the two following years, one of the receivers of petitions to parliament; and died about 1374. *Id.*

<sup>536</sup>Foss's Biogr. Jurid. Mr. Ireland says: "In the year 1377 this house was annexed by patent to William Burstall, clerk, *custos rotulorum*, or keeper of the rolls of the chancery in the 50th and last year of his reign." Ireland's Inns of Court, sect. 15, p. 202. On the next page the language is, "In the fifteenth of Edward the Third's reign, he annexed, by letters patent, this house to the office of *custos rotulorum*." *Id.*, p. 203.

<sup>537</sup>2 Inst., 552.

occurring in 46 Edw. III (1372), June 29.<sup>538</sup> Thereupon "Sir *John Knyvet*, knight, chief justice of England, a man famous in his profession, was made lord chancellor."<sup>539</sup>

'We have a proof in the Year Book of 48 Edw. III (fo. 32, pl. 21) that *Knyvet*, while chancellor, used to visit his old court. It is there stated '*Et puis Knivet le Ch. vyent en le place et le case luy fuit monstr. par les justices, et'il assenty,*' &c."<sup>540</sup>

The following other cases are mentioned by Lord Coke:

"In 47 E. III, fol. 13<sup>b</sup>, *Finchden*, chief justice of the Common Pleas, in a matter of law depending in that court, said that he would confer with the Chancellor and the Justices of the King's Bench; and in the end judgment was given by the advice of the Chancellor (*viz: Knivet*) and all the judges of the realm. In 49 E. III<sup>b</sup>, *Knivet*, chancellor, argueth a matter in law and giveth judgment."<sup>541</sup>

During the four years and a half that he retained the chancellorship, Sir *John Knyvet* "acted with great wisdom and discretion."<sup>542</sup> "In perusing the rolls of parliament in the times" that Sir *Robert Paining*, Sir *Robert Thorpe* and Sir *John Knyvet* were Lord Chancellors, "we find no complaint at all of any proceeding before them."<sup>543</sup>

But now, under the influence it is said of the Duke of Lancaster, the king was induced to revert to the old practice of having ecclesiastical chancellors; and Sir *John Knyvet*<sup>544</sup> was substituted as chancellor Jan. 11, 1376-7 (50 Edw. III), by *Adam de Houghton*, bishop St. David's.<sup>545</sup>

<sup>538</sup> Foss's Biogr. Jurid., tit. *Thorpe* (Robert de); 2 Stubbs's Const. Hist., ch. 16, p. 424.

<sup>539</sup> '5 Julii, anno 46, E. III,' is the date in 4 Inst., 79; June 30, 1372, is the date in Foss's Biogr. Jurid., p. 389, tit. *Knyvet* (John.)

<sup>540</sup> Foss's Biogr. Jurid.

<sup>541</sup> 2 Inst., 552, 553.

<sup>542</sup> Foss's Biogr. Jurid.

<sup>543</sup> 4 Inst., 79.

<sup>544</sup> Of the King's will (dated Octo. 7, 1376), Sir John was one of the executors. He (Sir John) died in 4 Ric. II.

Foss's Biogr. Jurid.

<sup>545</sup> Probably son of *John de Houghton* (or Houton) mentioned in § 24, p. 575, as a baron in 1347. Adam was educated at Oxford, and adopted the clerical profession. His connection with the court is evidenced by his being appointed in 1360, one of the commissioners to receive possession of counties and cities which the King of France had agreed to give up by treaty. In 1361 he was placed in the see of St. David's. *Id.*

53. *Of the ordinance in 46 Edw. III, mentioned in 4 Inst., 10; and of the parliament in 47 Edw. III (1373).*

A passage in 4 Inst., 10, as to an ordinance in 46 Edw. III, is the subject of observations by *William Prynne*, in the preface of March, 10, 1656, to his edition of Cotton's Abr. Out of the parliament roll of 46 E. III, No. 13, he has (in that preface) inserted the ordinance; as to which he uses this language:

"An ordinance most fit to be put in actual execution against such practising lawyers, who make sure to be elected Parliament members, only or principally, to get clients, practice and pre-audience of others at the bar, and to promote their clients' or friends' causes in the House, rather than diligently to discharge their public duties faithfully in the parliament, according to their trusts, as too many have done of later ages, as well as when this ordinance was first enacted."<sup>546</sup>

What appears in Cotton's Abr. may be compared with Lord Campbell's statement.<sup>547</sup> According to the former volume (published in 1657), the causes of the parliament at Westminster in 47 Edw. III (1373),<sup>548</sup> were declared by "Sir *John Knyvet*, being chancellor."

"The next day certain of the Commons came to the Lords' House and required that certain of the Lords there named would vouchsafe

<sup>546</sup> The ordinance referred to is in 1 Stat. of the Realm, p. 394; and 1 'Statutes Revised,' ed. 1870, p. 216. It is remarked on in 2 Stubbs's Const. Hist., ch. 16, pp. 424, 425. Referring to an order of Edw. III, in 1330, Mr. Stubbs observes that "the attempt made by the Commons, in 1372, to prevent the election of lawyers as knights of the shire, is another illustration of the wish to purge the assembly of a class of members who were supposed to be more devoted to private gain than to public good." *Id.*, ch. 17, p. 618, and note.

<sup>547</sup> "In November, after Knyvet's appointment, a parliament was held at Westminster, but for some reason, not explained to us, the chancellor did not

preside at the opening of it, and, by the king's command, the causes of the summons were declared by Sir *Henry Bryan*, one of the king's council." 1 Lives of Chancellors, p. 268 of 2d ed. (1846), p. 253 of Boston ed. 1874; citing 1 Parl. Hist., 136. Lord Campbell speaks of another parliament summoned to meet in November, 1373, in which Lord Chancellor Knyvet declared the causes of the summons.

<sup>548</sup> "The next day after St. Edmund, the king." Cotton's Abr., p. 116. November 20 being the day of S. Edmund, 'king and martyr,' it follows that the parliament was summoned to meet on Nov. 21. It sat until Dec. 10. 2 Stubbs's Const. Hist., ch. 16, p. 425, and note 2.

to confer with the Commons; whereupon they went presently into the chamberlain's chamber to treat with the Commons.<sup>549</sup>

After consultation, the Lords and Commons make to the King certain grants upon conditions; and with prayers; one of which is "that none of the Commons' House be appointed to be a collector for any of these grants."<sup>550</sup>

54. *Of the parliament of 50 Edw. III (1376); wherein, after the death of Edward, Prince of Wales, his son Richard came before the Lords and Commons.*

After the parliament of 47 Edw. III, there was no other till that of 50 Edw. III (1376), at Westminster.<sup>551</sup> The next day after that for which it was called "Sir John Knevit, Knight, Chancellor of England, before the King, Lords and Commons, declared the causes of the parliament."—"He willed them to go together, the Lords by themselves, and the Commons by themselves, and speedily to consult and give answer."<sup>552</sup> After which, among other proceedings, are the following:

No. 10. "An order devised by the Commons that the King should have at least ten or twelve councillors, without whom no weighty matters should pass, and for smaller matters, at least six or four of them; whereunto the King granted, provided that the Chancellor, Treasurer and Keeper of the Privy Seal, should, by themselves and all matters belonging to their offices; and that these councillors should take no rewards."

<sup>549</sup> Cotton's Abr., p. 116, No. 5. "This is the first instance since the institution of representative parliaments of a practice which was soon to acquire great importance." 2 Stubbs's Const. Hist., ch. 16, p. 426.

<sup>550</sup> *Id.* Cotton's Abr., pp. 116, 117, Nos. 6 and 12. In 1 Stat. of the Realm, p. 395, is a statute as to 'assize of cloths' and as to 'currency of the Scottish Groat.'

<sup>551</sup> The 23d of April is the day of St. George; the parliament was for the Monday after, being called for "the Monday next after the feast of St. George."

"The same day most of the Lords and many of the Commons were before the King in his own chamber; where, for that sundry of the Lords and Commons were not come, proclamation was made in the Great Hall at Westminster, that all such as were summoned to the parliament should be there the next morning by eight of the clock." Cotton's Abr., p. 120.

<sup>552</sup> "The Commons were willed to depart to their accustomed place, being the Chapter House of the Abbot of Westminster, whither they went; whereupon certain Lords and Nobles were appointed to go and consult with the Commons who are there particularly named." *Id.*

11. "That no other of the King's officers or ministers do take any reward for any matter touching their offices."

12. "That report of matters of council shall be made to the King by some one or two of the council appointed, and none others."

13. "That all ordinances made by the King and his Council, shall be, by all the King's officers, executed."<sup>553</sup>

No. 35. "The King ordaineth that from *thenceforth* no woman should, for maintenance, pursue any matter in the King's courts—and namely, Alice Perrers—upon loss of all that they have and banishment forever out of the realm."<sup>554</sup>

37. "For that Adam de Bury was accused of divers deceits and wrongs done by him while he was Mayor of Callice and Captain of Bellingham, as hereafter may appear, and was sent for to come unto the parliament, and came not, nor yet could be found,—it was agreed that all his goods and chattels should be arrested; and so they were."

38. "The Bishop of Norwich supposeth an erroneous judgment to be given against him in the Common Place for the archdeaconry of Norwich belonging to his presentation and prayeth that those errors may be heard and redress thereof; whereunto answer was made that errors, by law, in the Common Place, are to be corrected in the King's Bench, and of the King's Bench in the Parliament and not otherwise."

41. "On Wednesday the day after S. John,<sup>555</sup> at the request of the

<sup>553</sup> Cotton's Abr., f.p. 120, 121. The Commons afterwards (in Nos. 15 and 16) require "that falsehoods and crafts of certain of the king's council and other persons may be tried and punished;" and specify that there should be trial "First of such of the council as convey staple ware and bullion to other places than to Calice for their own private turn; secondly, of such as made shifts for money for the king deceitfully; thirdly, of such as of covin between certain of the council and them bought of sundry the king's subjects debts due to the king to them for the tenth or twentieth penny."

Whereupon there were proceedings against—1. Richard Lyons, merchant of London (in Nos. 17, 18, 19, 20); 2. William, Lord Latimer (in Nos. 21 to 30); 3. William Ellis, of Great Yarmouth (in Nos. 31, 32); 4. John Peach, of London (No. 33); 5. The Lord John Nevil (No. 34). Of some of these proceedings there is an account in 2 Stubbs's Const. Hist., ch. 16, pp. 430, 431.

<sup>554</sup> Alice Pierce (or Perrers) is mentioned in 4 Collyer's Engl., pp. 158, 160, of ed. 1775; 2 Hume's Engl., ch. 16, p. 264, of N. Y. ed. 1850; 2 Stubbs's Const. Hist., ch. 16, pp. 427, 428, and p. 431. That it was proper to construe the ordinance not as retrospective but merely as *prospective*, is manifest not only from No. 35, above quoted, but also from Hall. Mid. Ages, ch. 8, part 3, p. 105, of vol. 2, Phila. ed. 1824; and from what is furnished by Dr. Lingard. He states that the ordinance was as follows:

"Whereas complaint has been brought before the King that some women have pursued causes and actions in the King's courts by way of maintenance, and for hire and reward, which thing displeases the King, the King forbids that any woman do it *hereafter*, and in particular Alice Perrers, under the penalty of forfeiting all that the said Alice can forfeit, and of being banished out of the realm."

4 Lingard's Engl., ch. 2, p. 102.

<sup>555</sup> June 24, is the day of 'St. John the Baptist.'



Commons, came into the open parliament before the Lords and Commons, *Richard Bordeane*, the son and heir of Edward,<sup>556</sup> late Prince of Wales and heir apparent to the realm, of whom after the archbishop of Canterbury had spoken words of commendation, the Commons with one voice prayed that the Lords would make him Prince of Wales, as his father was; who said it laid not in them but in the King only so to do, whom they promised therein to be mediators."

42. For that the King was diseased at Eltham<sup>557</sup> the Lords and Commons went thither, to have the premises before and after confirmed and answered."

"The premises," embrace numbers of "petitions of the Commons, with their answers," (No. 43 to 189,) and of "petitions exhibited by the clergy and their answers," (No. 190 to 203); the last of these numbers concluding thus:

"And so this parliament ended at Eltham; the which continued from day to day from the beginning unto this present Thursday, the sixth of July, in the whole ten weeks and more."<sup>558</sup>

55. *Recognition in 50 Edw. III of the principle that there may be redress on a bill of complaint against a judgment wrongfully caused; and of the chancellor's jurisdiction in other cases. Of the statute of 50 Edw. III; especially ch. 6 against gifts made by collusion.*

Among the proceedings of the parliament just mentioned is "an order that the Prior of Ecclefield, an alien, should exhibit his *bill of*

<sup>556</sup> This Prince (Edward) who, by dispensation in 1361, married his cousin Joanna or Joan of Kent (granddaughter of Edward I, and daughter and heiress of Edmund, earl of Kent, a brother of Edward II), went with his wife to France, and kept his court at Bordeaux. That was the birth-place of Richard, his son and heir. 8 Harl. Miscel., p. 174, of Lond. edi. 1810; Hume's Engl., ch. 16, p. 266, of N. Y. edi. 1850; 2 Stubbs's Const. Hist., ch. 16, p. 416.

<sup>557</sup> At Eltham (in Kent county), eight

miles from London, are the remains of a royal palace, which was for centuries a favorite retreat for English sovereigns, but which was gradually deserted on the rise of Greenwich. *Subterranean passages* at Eltham palace were discovered in 1834; an account thereof (taken from a small pamphlet published at Greenwich) was in the Penny Magazine for Octo. 11, 1834 (No. 162), p. 399.

<sup>558</sup> This conclusion is in Cotton's Abr., p. 140.

*complaint* against the Lord Latimer for the parsonage of Ecclefield, which the said Lord had *wrongfully* caused to be recovered against the said Prior;<sup>559</sup> which seems to recognize that *after judgment given* in a court, there might be redress upon a *bill of complaint* shewing that the recovery was *wrongfully* caused.

As to exercise of jurisdiction by the chancellor, there is (among "the petitions of the Commons with their answers") the following:

"The Mayor and Commons of Newcastle-upon-Tyne, complain that where the Prior of Tinmouth, parcel of S. John, of Jerusalem, in England, by cautelous and suborned means, brought his writ of freehold in Fernham, and put in view and plaint, the greater parcel in value of the same town, holden in farm of the Crown time out of mind, and recovered. Whereupon order was taken that the same Justice of Assize should not, in that assize, have a procedendo, but that the chancellor should grant a commission for the examining of the truth, until which time the matter should stay; they therefore require that the assize be no further proceeded in until the commission return."

Answ. "Remedy is provided in this parliament, as appeareth by another bill thereunto endorsed."<sup>560</sup>

The statute of 50 Edw. III<sup>561</sup> embraces several chapters<sup>562</sup> besides chapter vi.

This recites that "divers people inherit of divers tenements, borrowing divers goods in money or in merchandize, of divers people of this realm, do give their tenements and chattels to their friends, by collusion thereof to have the profits at their will, and after do flee to the Franchise of Westminster, of St. Martin le Grand of London, or other such privileged places, and there do live a great time with an high countenance of another man's goods and profits of the said tenements and cattels till the said creditors shall be bound to take a small parcel of their debt and release the remnant"; and then ordains "that if it be found that such gifts be so made by collusion, that the said creditor shall have execution of the said tenements and chattels as if no such gift had been made."<sup>563</sup>

<sup>559</sup> Cotton's Abr., p. 123, No. 36.

<sup>560</sup> *Id.*, p. 134, No. 140.

<sup>561</sup> 1 Stat. of the Realm, p. 398;  
1 Statutes Revised, ed. 1870, p. 218.

<sup>562</sup> i and ii. Of Holy Church and the Charters; iii. Of the king's pardon to

the people; iv. Of prohibition; v. That Priests and clerks shall not be arrested during divine service; vii. Against exporting woollen cloths unfilled; viii. Excepting Irish Frize from subsidy.

<sup>563</sup> 1 Statutes of the Realm, p. 398.

56. *Influence of, and opposition to, John of Gaunt. Sir William de Skipwith reappointed to the English bench. Of his reappearance in the Common Pleas; and the course of the Duke of Lancaster. Charges against the ex-chancellor, William of Wykeham, are brought before Skipwith. Of the judgment thereon; and consequences of the attack on Wykeham.*

John of Gaunt had been suspected of contemplating, when his brother Edward, Prince of Wales, should be in his grave, to set aside the heir of the crown. Both in the parliament of 1373, and in that of 1376, there appeared strong opposition to John's influence in the administration of the government. That opposition had the support of the Prince.<sup>564</sup> When his death<sup>565</sup> was known, the Commons "determined on still more trenchant measures."<sup>566</sup> At their request, as stated in Nos. 41 and 42, cited in § 54, pp. 628, 629, that Prince's son, Richard, the heir apparent to the crown, came into the open parliament before the Lords and Commons.

Mr. Hallam observes that "the policy adopted by the Prince of Wales and Earl of March<sup>567</sup> in employing the House of Commons as an engine of attack against an obnoxious ministry, was perfectly novel, and indicates a sensible change in the character of 'the constitution.'"<sup>568</sup>

The influence of John of Gaunt was greater after than before the adjournment of the parliament of 1376. No respect to its determinations was shewn by him. He dismissed the additional members of the council, recalled to court and office the impeached lords, and exercised an amount of power which had been exercised never by a subject and rarely by a sovereign.<sup>569</sup>

October 8, 1376, is the date of the reappointment to the Common Pleas in England of *William de Skipwith* (mentioned in § 46, p. 613).

<sup>564</sup> Hall. Mid. Ages, ch. 8, part 3, p. 104 to 106 of vol. 2, Phila. edi. 1824; 2 Stubbs's Const. Hist., ch. 16, p. 420 to 432.

<sup>565</sup> At Canterbury, June 8, 1376. There he was buried in Christ's church, and a monument was erected to his memory. 8 Harl. Miscel., p. 177.

<sup>566</sup> 2 Stubbs's Const. Hist., ch. 16, p. 432.

<sup>567</sup> Who as stated in § 41, p. 605, note, had married Lionel's daughter.

<sup>568</sup> Hall. Mid. Ages, ch. 8, part 3, p. 106 of vol. 2, Phila. edi. 1824.

<sup>569</sup> 2 Stubbs's Const. Hist., ch. 16, p. 435.

Observing what took place on one occasion (which was probably his first appearance in the court after his return from Ireland), Mr. Foss says:

"No one can observe the manner in which *Skipwith* is noticed, in the only case in which his name is mentioned in Michaelmas, 50 Edw. III, in the Year Books, without being satisfied that it is no new judge who speaks, but one who had experience and authority. *Et adonques vient Mons. W. Skipwith en le place quant le matt. fuit pled. et did, &c.* The great case of the Bishop of 'Sancte Davy' and John Wyton, clerk, was then in discussion, and his opinion having been given with dignity and distinctness, the other judges concurred, and the judgment was pronounced in accordance with it."<sup>570</sup>

The Duke of Lancaster proceeded to take vengeance on those who, in the recent parliament were leaders in opposition to his views: the earl of March was compelled to resign the office of Marshal, which he had held since 1369; *Peter de la Mare* was summoned before the king's court and imprisoned;<sup>571</sup> and there were steps against a man of higher reputation than either of them.

*William of Wykeham*, bishop of Winchester, "retained the confidence of his sovereign, and faithfully sided with him in his declining years, when the Duke of Lancaster and Alice Perrers were taking advantage of his weakness and assuming the government of the kingdom. When the Prince of Wales, then in a desperate state of health, made a strong effort in the 'good parliament' of 1376 to break this party, the bishop was one of the council then appointed to advise the king, and on the Prince's death in June, Richard, his son, was declared Prince of Wales."<sup>572</sup>

The Duke and his adherents vented on *William of Wykeham* part of their resentment. It is curious to observe that he was called before one who had been removed from the office of Chief Baron Octo. 29, 1365, made Chief Justice of the King's Bench in Ireland, Feb. 15, 1370, and reappointed a Justice of the Common Pleas of England Octo. 8, 1376; before *William de Skipwith* charges were brought in Mich. T., 1376.<sup>573</sup>

The Duke and his adherents exhibited against *William of Wyke-*

<sup>570</sup> Foss's Biogr. Jurid.

<sup>572</sup> Foss's Biogr. Jurid.

<sup>571</sup> 2 Stubbs's Const. Hist., ch. 16, p. 435.

<sup>573</sup> 2 Stubbs's Const. Hist., ch. 16, p. 435, and note 5.

ham "seven charges of crimes alleged to have been committed during his administration, on which they relied so little as to offer no proof in their support, but added an eighth as to cancelling a roll, and reducing a fine from £80 to £40 in favour of John Grey, of Retherfeld. Upon this trifling charge his temporalities were adjudged on November 17 to be seized into the King's hands, and he was forbidden to come within twenty miles of the court. The farther proceeding thereon" was "adjourned till Jan. 20, 1377, but it was never brought to a hearing."<sup>574</sup>

"The attack on *William of Wykeham* had placed the clergy in strong opposition. This opposition the duke had no power to break up, and in consequence he called to his assistance, as a temporary expedient, no doubt, the great *John Wycliffe*, whom he had known during the conferences at Burges."<sup>575</sup>

57. *Of the parliament called for Jan. 1377; attempt to influence the elections; and change of the ministry. Of Richard, now Prince of Wales and President of the parliament. Proceedings of the parliament and of the convocation; especially of opposition to granting aid to the King until Wykeham was restored to his rights.*

The parliament "called on the 1st of December, to meet on the 27th of January, 1377," is mentioned as "the first occasion on which any definite signs are traceable of an attempt to influence the elections for a political purpose." Mr. Stubbs observes that "no pains were spared by the duke to pack the new parliament, and he was successful."<sup>576</sup>

Since the last parliament, the King had advanced his grandson, Richard, to be Prince of Wales. Born in 1365 or 1366, "Richard,

<sup>574</sup> Foss's Biogr. Jurid.

<sup>575</sup> "And on whom he felt that he could rely as a stern opponent of the aggrandizement of the clergy, and not less as an influential popular leader." 2 Stubbs's Const. Hist., ch. 16, p. 436. "On the 22d of September, 1376, Alan, of Barley, was sent with a writ to Oxford to summon John Wycliffe to appear before the king's council." *Id.*, note 6.

<sup>576</sup> 2 Stubbs's Const. Hist., ch. 16, p. 436. Mr. Hallam notes that "not more than six or seven of the knights, who had sat in the last parliament, were

returned to this, as appears by the writs in Prynne's 4th Register, pp. 302, 311." Hall. Mid. Ages, ch. 8, part 3, in note on p. 106 of vol. 2, Phila. edi. 1824.

"To make matters still safer," the duke "changed the ministry on the eve of the meeting; on the 11th of January he removed the chancellor and treasurer, and filled their places with two bishops. *Adam Houghton*, bishop of S. David's (as mentioned in § 52, p. 625), took the Great Seal, and *Henry Wakefield*, of Worcester, one of the king's executors, "took the treasury." 2 Stubbs, p. 436.

Prince of Wales, Duke of Cornwall, and Earl of Chester," may have been eleven but not more than twelve years of age," when in 51 Edw. III, in the "fifteen of S. Hilary, being Tuesday next after the conversion of S. Paul,"<sup>577</sup> the said Prince, at Westminster, in the Painted Chamber, was "sitting in the King's own place, in the absence of the King"; and "the King sent thither his letters patent to the said Prince to begin the parliament."—"The Bishop of S. David's being chancellor, at the commandment of the said Prince, then and there President," continued the said parliament until the next day at nine of the clock in the morning," and on the next day "began his long oration." He was followed by "Sir Robert de Ashton, the King's chamberlain." After which "the Commons' House were willed to repair to the Chapter house of the abbey of Westminster"; and certain Lords "were appointed from time to time to confer with the Commons."<sup>578</sup>

Almost contemporaneously with the parliament was a convocation for which was issued a writ by the King, and a summons by the archbishop, through the bishop of London. Although *William of Wykeham* had not been summoned to parliament, yet Courtenay, as dean of the province, had summoned him to the convocation which met on the 2d of February.

*Wykeham* "did not attend on the first days, probably obeying the royal order not to come near the court. Courtenay, however, undertook to plead his cause, and when the King's request for aid was announced, urged the clergy to give nothing until the bishop of Winchester was restored to his rights. So unanimous were they that the archbishop adjourned the debate and laid the matter before the King, who gave a general promise of redress. *Wykeham* then took his place in convocation."<sup>579</sup> But Courtenay was not satisfied:

<sup>577</sup> January 25, being the day of the "Conversion of St. Paul;" it may be that "Tuesday next after was Jan. 27." The "parliament met on the 27th of January." 2 Stubbs's Const. Hist., ch. 16, p. 439.

<sup>578</sup> Cotton's Abr., p. 144.

<sup>579</sup> In Cotton's Abr., p. 151, after the caption, "Petitions of the clergy with their answers," and after Nos. 80, 81, 82 and 83, which may have been such peti-

tions and answers, No. 85 is this: "Touching the bishop of Winchester, and matters by him attempted to be reformed, order was that his temporalities should be seized into the king's hands." From this it would seem that notwithstanding the tone of opinion in the convocation, "the majority in parliament proved all powerful." 2 Stubbs's Const. Hist., ch. 16, p. 439.

he proceeded to attack the Duke through his new ally. Wycliffe was called before a committee of bishops at St. Paul's on the 19th of February to answer the charges of the convocation, and appeared under the protection of John of Gaunt and Henry Percy. An insult offered to Courtenay by the Duke provoked the Londoners; in the riot that ensued the latter had to fly for his life, and although the prosecution of Wycliffe was given up for the time, Courtenay secured a momentary victory. The Londoners, rightly connecting the cause of their bishop with that of Peter de la Mare, insisted that the latter should have a fair trial, and sent a deputation to Edward, which, notwithstanding the opposition of the Duke, was admitted into the King's presence. Edward's gracious demeanour and ready promises had their usual effect. The excitement was allayed."<sup>580</sup>

After Feb. 22, "certain Bishops and Lords, the Chancellor, Treasurer and Keeper of the Privy Seal, and all the Justices by the King's appointment went to Sheen,<sup>581</sup> where the King lay sick, and there, in their presence, the articles of the King's general pardon<sup>582</sup> were read, with other answers made to the petitions of the Commons,<sup>583</sup> whereunto the King agreeth and willed that they should the next day be read in the House, and to make the same the last day of parliament: the which was done the next day" (being Feb. 23), "by authority of the King and of the President."<sup>584</sup>

87. "The last day of the parliament, Sir *Thomas Hungerford*, Knight, Speaker of the parliament, declared how that during the parliament he had generally moved the King to pardon all such as were in the last parliament unjustly convicted, and how the King willed him to make a special bill therefore, which was done to seven, but *no answer thereto made*."<sup>585</sup>

In the following April, or May, *Adam de Houghton* was at the head of the commissioners to negotiate a peace with France; for which purpose he proceeded to Calais, and was still there at the time of King Edward's death.<sup>586</sup> *Richard de Ravenser*<sup>587</sup> was called

<sup>580</sup> 2 Stubbs's Const. Hist., ch. 16, pp. 438, 439.

<sup>581</sup> In Surrey; being two miles from Richmond, and seven or eight from London.

<sup>582</sup> In Cotton's Abr., p. 146, Nos. 24, 25 and 26.

<sup>583</sup> In Cotton's Abr., p. 146 to 151; 2 Stubbs's Const. Hist., ch. 16, p. 427, note 2.

<sup>584</sup> Cotton's Abr., p. 146, No. 22.

<sup>585</sup> Cotton's Abr., p. 151, No. 87. The

seven Nos. following are 88, as to Richard Lyons, merchant of London; 89, Alice Perrers; 90, John de Leicester; 91, Adam de Bury; 92, Walter Sporer; 93, John Peach, of London; 94, William Ellis, burgess of Yarmouth.

95. "And it is to be remembered that nothing was answered to the bill foresaid, for that the parliament ended that day." Cotton's Abr., p. 152.

<sup>586</sup> Foss's Biogr. Jurid.

<sup>587</sup> In 31 Edw. III, he had a grant of

upon (with two other clerks) to hold the Great Seal during the chancellor's temporary absence.<sup>588</sup>

58. *The King's death in June 1377. His character; and results of his reign.*

Edward the third died on the 21st of June, 1377, in the sixty-fifth year of his life, and the fifty-first of his reign.<sup>589</sup>

"More than usual care had been bestowed on his education; and he could not only speak the English and French, but also understood the German and Latin languages. His elocution was graceful, his conversation entertaining, his behaviour dignified, but also attractive. To the fashionable amusements of hunting and hawking<sup>590</sup> he was much addicted: but to these he preferred the more warlike exercise of the tournament; and his subjects, at the conclusion of the exhibition, often burst into transports of applause when they found that the unknown knight, whose prowess they had admired, proved to be their own sovereign."<sup>591</sup>

"There is not a reign among those of the ancient English monarchs, which deserves more to be studied than that of Edward III, nor one where the domestic transactions will better discover the true genius of that kind of mixed government, which was then established in England."<sup>592</sup>

Lord Coke mentions him as "a noble, wise and warlike king, in

the office of keeper of the Hanaper. In the next year he was assigned to administer the goods of the late Queen Isabella. In 36 Edw. III, he was appointed one of the twelve clerks in the chancery of the higher grade. He retained the Hanaper for some years longer, but continued a clerk of the chancery during the remainder of his life, and was endowed with the usual ecclesiastical preferments, the last of which was that, in 42 Edw. III, when he was made archdeacon of Lincoln. He was rich enough to lend the king £200, which was repaid in 44 Edw. III. *Id.*

<sup>588</sup> It was so held from May 4 to the day of King Edward's death. *Id.*

<sup>589</sup> 2 Hume's Engl., ch. 16, p. 264, of

N. Y. edi. 1850.

<sup>590</sup> From a letter of August, 1370, written by the father of the wife of Lionel (mentioned in § 41, p. 605, note), it appears that "Galeazzo Visconti had presented Edward with a falcon named the Cyprian, that the king was understood to have been delighted with it, but it died; Galeazzo had others equally good, and better; and promises should no hinderance to the conveyance happen that he will undoubtedly replace it." Sir H. Ellis's 3d series of Orig. Let., vol. 1, p. 43 to 45, of Lond. edi. 1846.

<sup>591</sup> 4 Lingard's Engl., ch. 2, p. 106, of N. Y. edi. 1850.

<sup>592</sup> 2 Hume's Engl., ch. 16, p. 277, of N. Y. edi. 1850.



whose reign the laws did principally flourish.”<sup>593</sup> In the present century an eminent historian has said :

“Edward III was not a statesman, although he possessed some qualifications which might have made him a successful one. He was a warrior; ambitious, unscrupulous, selfish, extravagant and ostentatious. His obligations as a king sat very lightly on him.”<sup>594</sup>

“The glory and the growth of the nation were dearly bought by blood, treasure and agony of many sorts. The long war which began under Edward placed England in the forefront of Christendom; it gave her a new consciousness of unity and importance, and exercised, even while it exhausted, her powers. It enabled her leading men to secure, one by one, steps in advance, which were never retraced, and to win concessions from Edward which he was unable, or did not care, to estimate at their true value. Hence, whilst England owes no gratitude to the King for patriotism, sagacity or industry, she owes very much to the reign.”<sup>595</sup>

“The efforts of parliament, in behalf of their country, were rewarded with success in establishing, upon a firm footing, three essential principles of our government; the illegality of raising money without consent; the necessity that the two houses should concur for any alterations in the law; and lastly, the right of the commons to enquire into public abuses, and to impeach public counsellors.”<sup>596</sup>

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## CHAPTER XX.

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### INSTITUTIONS IN THE REIGN OF RICHARD II—1377 TO 1399.

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- .....
1. *In 1377, July, Richard crowned and a council chosen; William of Wykeham pardoned. In October, meeting of Parliament. Its proceedings; some being judicial.*

The Duke of Lancaster, as high steward of England, arranged the ceremonies of the coronation. It took place on July 16, when the

<sup>593</sup> 2 Inst., 29.

<sup>594</sup> 2 Stubbs's Const. Hist., ch. 16,  
p. 374.

<sup>595</sup> *Id.*, p. 375.

<sup>596</sup> Hall. Mid. Ages, ch. 8, part 3, p. 94  
of vol. 2, Phila. edi. 1824.

years of Richard's life were not more than eleven; on the 17th a standing council was chosen."<sup>1</sup>

It was "not exactly a council of regency: the King remained under his mother's care, and she, without any formal title, acted as guardian and chief of the court."—"Two bishops, two earls, two barons, two bannerets, and four knights bachelors were chosen to aid the chancellor and treasurer."<sup>2</sup>

July 31, William of Wykeham had a full pardon and release from Richard.<sup>3</sup> Aug. 4, a summons was issued for a parliament.

"At the Quindean of St. Michael, being Tuesday, the 13th of October," "at the palace of Westminster, in the Blanch chamber," "for that divers of the bishops and lords were not come, the Archbishop of Canterbury, by the King's commandment, adjourned the Parliament."

"At the which day, as well the King as the two Archbishops, with most of the Lords and Commons assembled in the Painted Chamber, where the Archbishop of Canterbury pronounced the cause of the Parliament."<sup>4</sup>

"The next day after Sir *Richard le Scroop*, steward of the King's house,<sup>5</sup> by the King's commandment, in the presence of the King, Lords and Commons, rehearsed the whole matter of the Archbishop, and willed them to consult thereof."<sup>6</sup>

<sup>1</sup>"By the King and the assembled magnates." 4 Lingard's Engl., ch. 3, p. 164; 2 Stubbs's Const. Hist., ch. 16, p. 440 to 442. The Duke of Lancaster retired with his suit to Kenilworth Castle. *Id.*

<sup>2</sup>Mr. Stubbs observes of the council, that it "bears evidence of a compromise:"—"the bishops were Courtenay of London, the late antagonist of John of Gaunt, and Ralph Erghum, of Salisbury, his ally; of the earls, Edmund of March and Richard of Arundel represented the opposite parties; the other members were the lords Latimer and Cobham, who were probably opposed in the same way; Roger Beauchamp and Richard Stafford, bannerets; John Knyvett, Ralph Ferrers, John Devereux and Hugh Segrave, knights." *Id.*, p. 442.

<sup>3</sup>*Ex certa scientia nostra et avisa-*

*mento et assensu carissimi avunculi nostri Johannis.* *Id.*, p. 441, note 1; citing Fœd. iv, 14; cf. Chr. Angl., pp. 150, lxxv sq.; Cotton's Abr., p. 163, No. 99; Foss's Biogr. Jurid.

<sup>4</sup>Cotton's Abr., p. 154, Nos. 1 and 2.

<sup>5</sup>*Richard le Scrope*, mentioned in ch. 19, § 52, p. 623, as treasurer in 1371, was, on the accession of Richard II, appointed steward of the household. Foss's Biogr. Jurid.

<sup>6</sup>Cotton's Abr., p. 155, No. 11. "The same day the Commons required sundry Lords and Nobles, with whom they might confer, and, as chief of them, the King of Castile and Aragon, and Duke of Lancaster;" on which occasion this Duke alluded to, and the Lords and Commons disclaimed, the imputation against him of treason. *Id.*, Nos. 12, 13, 14.

"After that Sir *Pierce de la Mere*, Knight,<sup>7</sup> being speaker," spoke "from the whole House"; *the first of their petitions* being "to name in the parliament" persons to be "resident about the affairs of the King and Realm, with others of the King's officers."

To which "the King assenteth so as the Chancellor, Treasurer, Keeper of the Privy Seal, Justices of the one bench and the other, may execute their offices, without the assent of such councillors."<sup>8</sup>

With *the second of the petitions*—"that *their* names may be known who shall be about the King's person"—the Lords would not intermeddle. They granted the third; which was "that the Common Laws, and other statutes and ordinances of the law may be observed, and may *not be defaced with master-ships* or singularities."<sup>9</sup>

Among the "petitions of the Commons, with their answers," are the subjoined.<sup>10</sup> The "Roll of the statutes" of 1 Ric. II, is in 2 Stat. of the Realm, p. 1 to 5.<sup>11</sup>

<sup>7</sup> Mentioned in ch. 19, § 56.

<sup>8</sup> Cotton's Abr., p. 155, No. 13 to 21. After which are the following numbers:

22. "The King also, by the advice of the Lords, in the same parliament, for that one year, chose nine other the like councillors, viz: the bishops of London, Carlisle and Salisbury, the earls of Stafford and March, Sir Richard Stafford and Sir Henry le Scroop, baronets, Sir John Deverose and Sir Hugh Segrave, bachelors, so as well these nine as the other *seven* (sic) shall continue councillors but one year, and not to be chosen during two years after."

23. "That no gift of the King of anything shall be made to any of the said councillors during the said year but by the common assent of all other councillors, or the most of them; that they take nothing other than meat and drink of small value, upon pain of losing double to the party, and six-fold so taken to the King; and that they maintain no quarrel; and that the discussion hereof be only to the King, to his uncles of Spain, Cambridge and Bucks."

47. "An act agreeing with the first part of 23 tit. of this year, saving to the King his regality; and that act made for councilors, in 50 E. III, shall stand."

50. "An act that the Chancellor,

Treasurer, Steward of the King's household and Chamberlain, during the King's minority, shall be chosen by the Lords in parliament, saving the inheritance of the Earl of Oxford in the office of Chamberlain; so always as if any of these officers die between the parliament, that then the King may name them by the advice of the continual council."

<sup>9</sup> Cotton's Abr., pp. 155, 156, Nos. 19, 20 and 26.

<sup>10</sup> *Id.*, p. 159, No. 49. "That none being duly deprived out from the council in the time of E. III be any more restored to be about the King's person."

*Ans.* "The King granteth thereto."

P. 164, No. 111. "That none of the parliament be appointed collectors of anything granted now."

*Ans.* This "the King granteth."

<sup>11</sup> The marginal notes indicate that ch. i is, "Confirmation of Charters and Statutes"; ch. ii is that "The peace shall be kept, and equal justice administered"; iii. Of "Action for prelates against purveyors"; iv. Of "Penalties for maintenance"; v. Of "Statutes for officers of the Exchequer confirmed"; debts once

In this parliament of 1 Ric. II, one of the petitions of the Commons was that "no suit between any parties be ended before any Lords or others of the *council*, but before the Justices only"; and the answer was, "The King granteth thereto."<sup>12</sup> But in the *parliament* there were proceedings of a judicial nature.<sup>13</sup>

28 and 29. William de Montacûte, earl of Sarum, alleging error in the record of the recovery from him of the land of Denbigh by Roger of Mortimer, earl of March, father to the now earl, "Sir *John Cavendish*, Chief Justice of the King's Bench, by appointment, brought out the same record into the parliament, there to remain until the next parliament, and a *scire facias* awarded against" "Edmund, earl of March, then to be there and to abide further order."<sup>14</sup>

30 and 31. A case of the "delivery of a ring of gold in the name of seisin."

32. A bill by "William Fitzhugh, citizen and gold-finer of London, in the name of the poor commonalty of that mystery, against John Chichester and John Balsham, of the same mystery"; whereupon

paid not to be demanded; punishment of clerk offending; vi. "Villaines and land-tenants withdrawing their services under the pretext of exemplifications from the book of Domesday"; and of "confederacies of villaines; commissions to justices of the peace to enquire thereof; punishment of such villaines and their abettors; declaration as to the said exemplifications"; vii. "Statutes against maintenance confirmed; punishment for giving liveries for maintenance; justices of assize shall enquire of offences"; viii. "Protections with the clause *volumus*, in what case not allowable"; ix. Of "Gifts of lands, goods, &c., in fraud, or for maintenance; such gifts declared void; disseisees may recover against disseisors after such alienation, where they take the profits"; x. Pardon in 51 Edw. III confirmed; xi. "No sheriff shall be reelected within three years"; xii. "Warden of the fleet

shall not let at large prisoners in execution; punishment by loss of office; action of debt at the suit of the plaintiff; penalty for confessing a debt to the King to delay another's execution"; xiii. "Malicious indictors for suing in spiritual courts, shall suffer as false appellors under Stat. Westm., 2 (13 Edw. I), c. 13; xiv. "In actions for goods taken away on claim of tithes, general averment shall not be received"; xv. "Penalty for arresting priests during divine service."

Of these chapters the fourth, eleventh, and twelfth are retained in 1 'Statutes Revised,' ed. 1870, p. 219 to 221.

<sup>12</sup> Cotton's Abr., p. 162, No. 87.

<sup>13</sup> Cotton's Abr., p. 156 to 158.

<sup>14</sup> Subsequent proceedings in the case are in Cotton's Abr., pp. 168, 169, No. 19 to 25; p. 176, No. 31 to 33; p. 184, Nos. 19, 20, 21.

they "came into the parliament and heard the same; and for that the said William, upon demand, refused to avow the same bill, he was committed to the Tower."

After which were cases wherein the charges were of a criminal nature; one being against Dame Alice Perrers (mentioned in ch. 19, § 54, and § 57, pp. 628 and 635), wherein it was adjudged that "she should be banished and forfeit all her lands, goods and tenements."<sup>15</sup>

## 2. Judges from 1 to 4 Ric. II.

Of the Exchequer:

*Henry de Asty* (mentioned in ch. 19, § 46, p. 614) remained in the office of Chief Baron of the Exchequer till December 6, 1380<sup>16</sup> (4 Ric. II), when he was succeeded by *Robert de Plesyngton*.<sup>17</sup>

*William Gunthorp*, *Lawrence de Allerthorpe*, *Henry de Percehay* (or Percy) and *Nicholas de Drayton*,<sup>18</sup> also continued on the Exche-

<sup>15</sup> No. 41 to 43. Upon the record which is mentioned as very long, there are the following observations (supposed to be) by Mr. *Prynne*. It "proveth no such heinous matter against her; only it sheweth that the same Dame was in such credit with E. III as she sat at his bed's head, when all of the council and of the privy chambers stood waiting without doors, and that she moved those suits that they dared not; and these two suits, wherefore she was condemned, seemed very honest; her mishap was, that she was friendly to many, but all were not so to her. The record is strange and worthy of sight." *Id.* At the ensuing parliament there was by "Sir William, of Windsor, and Alice, his wife, late called Dame Alice Perrers," a prayer for revocation of the judgment. *Id.*, p. 177, Nos. 36, 37. The matter was also before parliament in 22 Ric. III. *Id.*, p. 373, No. 71.

<sup>16</sup> Foss's Biogr. Jurid.

<sup>17</sup> His name is that of a township in

the parish of Blackburn, in Lancashire, which was probably his native place. In 50 Edw. III, he held an office in the Court of Exchequer, and was appointed one of the custodes of certain property in the town of Lancaster, and of several manors in the neighborhood. *Id.*

Mr. Foss alludes to Dugdale's supposition, that *Plesyngton* was removed from his seat on the bench on June 27, 1383; but does not assent to it. It may be noted that in the parliament of '7 Ric. II, in the Fall of 1383, is this: "The King, by assent of Parliament, confirmeth his pardon made to Sr. *Robert de Plesyngton*, so as the same be no derogation to the King's Prerogative." Cotton's Abr., p. 289, No. 63. Yet this may be consistent with Mr. Foss's supposition, that "*Plesyngton* continued in office without interruption till the tenth year of the reign." Biogr. Jurid.

<sup>18</sup> As to these four barons see ch. 19, § 47, p. 614.

quer Bench after the accession of Ric. II.<sup>19</sup> Allethorpe retained the office of baron during the whole reign.

*Richard Stokes* was constituted a baron October 9, 1377 (1 Ric. II),<sup>20</sup> and retained his seat on the bench till 21 Ric. II.

#### King's Bench:

*John de Cavendish* (mentioned in ch. 19, § 48, p. 616) was, on the accession of Ric. II, immediately reappointed Chief Justice, with the grant of 100 marks *per annum*, which had been for some years made to his predecessors.<sup>21</sup> *Thomas de Ingleby* (mentioned in same section) seems also to have continued in the King's Bench; no new judge being appointed there till towards the end of 1 Ric. II.<sup>22</sup> *Robert Tresilian*<sup>23</sup> was constituted a justice May 6, 1378.<sup>24</sup>

#### Common Pleas:

Of those judges (mentioned in ch. 19, § 45, pp. 610-613) who continued in the Common Pleas till the end of the reign of Edw. III, *William de Wichingham* was not reappointed on the accession of Ric. II; though Spelman (*Icenia*, 151,) calls him '*clarissimus nominis illius jurisconsultus*.'<sup>25</sup> Sir *Robert de Bealknap* retained his place as Chief Justice, and continued in the steady performance of

<sup>19</sup> Of Gunthorp, the latest mention in the character of baron is in 9 Ric. II; but up to 18 Ric. II, he is recorded as granting lands to the chantry of the church of St. Wolstan, in Grantham, Lincolnshire, and to the chapter of St. Mary, Southwell, in Nottinghamshire. Foss's Biogr. Jurid.

Percehay remained in this office only until Nov. 26, 1377, when he was removed to the Common Pleas. How long Drayton retained the office does not appear. *Id.*

<sup>20</sup> And appointed auditor of accounts of the king's bailiwicks in Wales and in Cheshire. *Id.*

<sup>21</sup> See *post* in § 7, as to his untimely end in 1381.

<sup>22</sup> About that time Thomas de Ingleby

died, and was buried in Ripley church, where his tomb remains. Of his descendants, one was Sir Charles Ingleby, a baron of the Exchequer in 1688; another was Sir William Ingleby, of Ripley; the title under whom becoming extinct in 1772, was renewed, and afterwards held by a kinsman of the family. Foss's Biogr. Jurid.

<sup>23</sup> Probably a Cornishman. He was educated at Oxford; elected fellow of Exeter College about 1354; and in Cornwall, where he possessed several manors and extensive lands, was, in 43 Edw. III an advocate at the assizes. In 1 Ric. II he was a king's serjeant. *Id.*

<sup>24</sup> And was the only puisne judge for four years. *Id.*

<sup>25</sup> Foss's Biogr. Jurid.

his duties in court and in parliament for several years. *Roger de Kirketon* and *Roger de Fulthorpe* were also reappointed.<sup>26</sup>

Then came from the Exchequer into the Common Pleas, Nov. 26, 1377, *Henry de Percehay* (or Percy);<sup>27</sup> and December 6, 1380, *Henry de Asty*.<sup>28</sup>

3. *At Gloucester, in 2 Ric. II, parliament opened by Adam de Houghton, the chancellor; Sir Richard le Scroop prominent. Statute of this parliament. Its other proceedings; some being judicial.*

In 2 Ric. II, at Gloucester, in the Great Hall of the abbey, on Thursday, the 21st of October,<sup>29</sup> the Lord Bishop of St. David's<sup>30</sup> declared the cause of the parliament. It was addressed on the 22d, by *Sir Richard le Scroop*, steward of the king's household. After which there was a speech by "*Sir James Pickering, knight*, speaker of the parliament for the Commons"; wherein, as to what occurred at the time aid was granted in the last parliament, he made a statement which was controverted by *Sir Richard le Scroop*.

"Thereupon the commons made request to know how and in what manner the same sums were defrayed; whether some were not therefore indebted; and who should be counsellors and great officers about the King's person for this year."

Which "*Sir Richard le Scroop*, by the King's commandment, answered."<sup>31</sup>

<sup>26</sup>*Id.* On the fines *Kirketon's* name does not occur beyond July 1380 (4 Ric. II); but he lived till 9 Ric. II. *Fulthorpe* was knighted in 1385; and fines continue to be levied before him till midsummer, 1387. *Id.*

<sup>27</sup>Fines are recorded as levied before him till midsummer, 1380. *Id.*

<sup>28</sup>He acted as a judge of the Common Pleas until Hil. T., 1383. *Id.*

<sup>29</sup>Parliament was summoned for "the Wednesday next after the feast of S. Luke, the Evangelist," being Octo. 20; then some met "in the abbey of S. Peter of Gloucester," and adjourned

until the next day. Cotton's Abr., p. 173.

<sup>30</sup>As stated on p. 635, in § 57 of ch. 19, *Adam de Houghton*, bishop of S. David's, was in France at the time of King Edward's death. On his return to England he was resworn as chancellor. His chancellorship lasted only till Octo. 29, 1378. Foss's Biogr. Jurid. Mr. Stubbs (citing Feod. iv, 55,) states that "*Houghton* had to answer to the pope for acts of violence which he had committed as chancellor." 2 Const. Hist., ch. 16, p. 446, note 5. He died in April, 1389. Biogr. Jurid.

<sup>31</sup>Cotton's Abr., pp. 173, 174.

Among the petitions of the Commons, with the answers thereto, are the following:

No. 49. "That no man, by writ or otherwise, be to answer of his freehold before the common council, but only at the common law."

*Answ.* "No man shall be forced to answer finally thereunto, provided that all persons shall answer, before the council, of oppressions."<sup>32</sup>

50. "That the poorer sort of justices of peace in every shire may be removed, and more able in their place."

*Answ.* "The chancellor, treasurer and other of the King's council shall, in such cases, appoint the most able."<sup>33</sup>

62. "They require that the justices of the peace may be allowed some certain fees."

*Answ.* "Two or three of the justices, such as hold the sessions, shall be only for one year and receive the sixth part of the profits of those sessions."<sup>34</sup>

27 and 28. "The Archbishop of Canterbury came before the King and Lords, and required audience, giving first most lowly thanks for the confirming of the liberties of the Church. He then required that the great villainy done in the abbey-church of Westminster may be revenged, viz: for that Robert Hamley, Esq., and one other were murdered in the church of Westminster, by the high altar, at high mass time; and so beseecheth that the King may be virtuously brought up in his youth and have good counsel.

"The Temporal Lords wished for the like bringing up of the King in virtue; and pray the King that where the clergy hath encroached against the laws, that the same may be redressed. They further say that the judges and learned of the law, and certain doctors of the Divine, Civil and Common Law, being examined and sworn before the King, have thereby affirmed that no man ought to enjoy the sanctuary in cases of debt, account or trespass, but only in cases where the life or member of a man lieth in danger. All which those doctors and clerks did after, in this present parliament, defend and openly prove against the bishops; whereupon the bishops could not then answer, but required longer day, which was granted."<sup>35</sup>

No. 34. "The Lady Nevill, of Essex, complaineth and sheweth that where John Brewes and others brake her house at London and violently took thereout Margery, the daughter of John Nerfoud, son to the said Lady, and carried her away unto the house of Robert Howard, Knight; all who kept away the said Margery to the end she should not pursue in court Christian adnullation of contract of matrimony against the said John Brewes. For which cause the said Robert was by the council committed to the Tower; and after delivered surety and promised to do his uttermost to bring forth the

<sup>32</sup> *Id.*, 178.

<sup>33</sup> *Id.*, 178.

<sup>34</sup> *Id.*, 179.

<sup>35</sup> *Id.*, pp. 175, 176, Nos. 27, 28.



said Margery by Michaelmas ensuing, or else to yield himself to the Tower again."

35. "The said Robert, at Michaelmas, came before certain of the council, and shewed his travel about the expedition afore, but that he could not meet with her; to whom the said council gave three months of longer respite. Notwithstanding, upon the said lady's pursuit, for that the said Robert not bringing forth the said Margery, did not yield himself prisoner to the Tower, the same Robert was therefore committed to the Tower again."<sup>86</sup>

51. "It is enacted that no justice shall stay justice for any writ of the Great or Privy Seal, or other commandment whatsoever; the same being against the law or statutes before that time made."<sup>87</sup>

63. "It is enacted that the statute made in the 14th year of Edw. III, ch. 5, touching taking away of delays, shall be observed."<sup>88</sup>

66. "It is enacted that no man shall be put out of his freehold by any letters-patent granted upon suggestions, unless the same be found for the King by inquest, or by evidence in the King's court."<sup>89</sup>

The statute made at Gloucester in 2 Ric. II, is in 2 Stat. of the Realm, p. 6.<sup>40</sup>

4. *In 1378, Octo. 29, Sir Richard le Scrope became chancellor. In 1379, April 27, he opened parliament. Its statute and other proceedings.*

The Great Seal was delivered to Sir *Richard le Scrope* in 1378,

<sup>86</sup> *Id.*, pp. 176, 177.

<sup>87</sup> *Id.*, p. 178.

<sup>88</sup> *Id.*, p. 179. The Statute of 14 Edw. III, ch. 5, is in the preceding chapter (ch. 19), § 21, pp. 575, 576.

<sup>89</sup> Cotton's Abr., p. 179.

<sup>40</sup> The following is from the margin.  
Ch. i. "Merchant strangers may freely come and abide within the realm, and buy and sell, in gross and by retail, provisions and small wares; aliens must sell their wines and great wares in gross only; the retailing thereof in cities and towns to be by their inhabitants alone, notwithstanding any charters; saving of the franchises of Lords and the ordinances of the staple at Calais; merchants may buy and sell at fairs as heretofore; penalty for disturbing merchants; and upon officers not punishing disturbers.  
ii. The Statute 25 Edw. III, stat. 3, cap. 3, against forestallers confirmed."

iii. "Merchants of the West may buy staple merchandizes; finding sureties to carry them to the West or to Calais;"  
iv. "Mariners leaving the service shall forfeit double wages and be imprisoned one year; the like punishment upon those taking anything to let them go at large."  
v. "The penalty for telling slanderous lies of the Great men of the realm."  
vi. "Sundry routs and unlawful confederacies recited; Statute of Northampton, 2 Edw. III, ch. 3, confirmed; commissions shall be awarded to arrest and imprison rioters, without indictment or other process; the Lords have promised to assist."  
vii. "Urban VI recognized for Pope."  
viii. "Statute of Labourers, 23 Edw. III, confirmed."

Chapter v is retained in 1 "Statutes Revised," edi. 1870, pp. 222, 223.

on Octo. 29.<sup>41</sup> As chancellor of England he, in 1379, on April 27, in the Painted Chamber at Westminster, declared the cause of the parliament.<sup>42</sup>

Among petitions of the Commons, with answers thereto, are the following:

No. 48. "That there be a certain number of justices learned in the law, which may, in every shire, be appointed and chosen by the lords and commons, that none be by them associated; their sessions to be holden four times yearly, and there to have fees at the sheriff's hands."

*Answ.* "The king will appoint able justices, no association shall be made, no remotion without consent of the council; two or three of such of them as shall hold the sessions shall have the sixth part of the profit of the same until the next parliament."

49. "A statute made that such as demand land against the king, and evidence therefore by writ shewn in the treasury, that in such case who sueth for the king, shall, after the return of four writs (every writ having 40 days' respit) answer."

*Answ.* "It is willed to be executed, notwithstanding any commandment of the Great or Privy Seal."<sup>43</sup>

No. 41. "It is enacted that no sheriff of any county shall be justice of the peace in the same county."<sup>44</sup>

A statute was made at the same session.<sup>45</sup>

5. *Parliament of 3 Ric. II opened by the chancellor, Sir Richard le Scroop. Its statute and other proceedings; some being judicial.*

The cause of the parliament in 3 Ric. II,<sup>46</sup> was declared by "Sir

<sup>41</sup> Foss's Biogr. Jurid.

<sup>42</sup> Cotton's Abr., p. 167. The parliament was summoned, for "the Quadregesima of Easter being the 25th of April;" it was continued until the next day; and from that till the following day, being the 27th. *Id.* It sat till May 27. Lord's Rep. i, 495; cited in 2 Stubbs's Const. Hist., ch. 16, p. 447, note 2.

<sup>43</sup> Cotton's Abr., pp. 171, 172.

<sup>44</sup> *Id.*, p. 171.

<sup>45</sup> The following is in the margin. (Ch. i.) "Liberties of the church charters and laws confirmed." (Ch. ii.) Stat. 2 Ric. II, Stat. 1, cap. 6, repealed; Stat. 2 Edw. III, ch. 3, confirmed."

(Ch. iii.) "Debtors who make feigned conveyances and flee to sanctuary, shall, on proclamation, appear to the suits of their creditors; or judgment and execution shall be had against their lands and goods," &c. 2 Stat. of the Realm, p. 12.

<sup>46</sup> At Westminster. It was summoned for "Monday next after S. Hilary," being Jan. 17, and was adjourned until the next day; the 'Chamber de Pinct' being the place of declaring the adjournment, and the place of meeting of the assembly. Cotton's Abr., p. 182. It sat to March 3. 2 Stubbs's Const. Hist., ch. 16, p. 448, note 1.

*Richard le Scroop*, Knight, Chancellor of England." He asked for aid to the King, and spoke of the receipts and disbursements.<sup>47</sup> On behalf of the Commons, Sir *John Gildesbrough*, their speaker, said :

"That the commons suppose that if the king were reasonably governed in his expenses, within and without the realm, that he should little need to charge his commons, being already much impoverished. And therefore they require the King to discharge the lords of the great council and to appoint about him only five counsellors, being his chief officers, viz: the chancellor, treasurer, keeper of the privy seal, chief chamberlain and the steward of the household, whose names they would know, and that they should not be removed without parliament, but for death, sickness or such like causes. Finally he requireth that it would please the king to appoint by commission certain such as should enquire by all means of the king's charges, as well of household as otherwise, and of all his officers beyond the seas, as on this side, and to appoint redress for defaults since his coronation."<sup>48</sup>

The King appointed such commission.<sup>49</sup> In this year there is a statute of parliament (3 Ric. II);<sup>50</sup> and during the session there were cases of a judicial nature.<sup>51</sup>

<sup>47</sup> Cotton's Abr., p. 182.

<sup>48</sup> *Id.*, p. 183.

<sup>49</sup> *Id.*, p. 183, Nos. 14, 15. The Commons "require that none of the five principal officers now appointed by parliament be displaced before the next parliament, without some special fault found in them. The answer is, "The statutes therefore, made in this king's first year, shall be observed." *Id.*, p. 185, No. 34.

Also among petitions and answers on same page (185) are the following :

No. 27. "Sundry counties lying upon the sea coasts, by name require that all chieftains of soldiers do recompense the harm done to the subjects by any of their soldiers while they lay for passage over."

Answ. "The King granteth, so as the parties do make complaint to such chieftains before their departure out of the realm."

Rot. Parl., 3 R. 2, Nos. 38 and 40, is referred to in 2 Inst., 586.

<sup>50</sup> In 2 Stat. of the Realm, p. 13 to 15. The following is in the margin (of ch. i). "Liberties of the church and laws of the realm confirmed." ii. "Statutes as to the assize of cloths confirmed; penalty on aulneger setting his seal to faulty cloths." iii. "Causes why advowsons of benefices were given to spiritual persons; inconveniences of giving benefices to aliens; former statutes not effectual; none shall administer or farm benefices in England for aliens; nor shall send money to aliens out of such benefices by bill of exchange or otherwise without the king's license, under the penalties of Statute 27 Edw. III, Stat. 1, cap. 1; process against offenders out of the realm to appear in half a year; no bishop, &c., shall meddle by sequestration, &c., with benefices given to aliens." 3 R. 2, Stat. 2, c. 3, is referred to in 2 Inst., 586; and is in 1 'Statutes Revised,' edi. 1870, p. 223 to 227.

<sup>51</sup> Cotton's Ab., p. 184.

No. 22. "Philip Darcy, knight, sheweth that whereas King Edw. III granted to John Darcy, knight, the reversion of the manors of Temphurst and Templemeston, and to his heirs male, which was the said Philip; the Prior of S. John of Jerusalem in England, upon the order of 17 E. II, had sued a *scire facias* where the said Philip prayed in aid of the King as in reversion, and that the said Prior sued in the *chancery* for a *procedendo*, which he requireth to be stayed."

23. "The said Philip showeth a deed in the parliament, whereby the predecessor of the said Prior granted those manors of Flaxfleet, being then in the King's hands, together with the manors of Dennis and Stroud next Rocestre, all being parcel of the lands of the Temple, to King E. II in fee; the which deed the same Prior seemeth to deny. But the same being so shewed before, was delivered to the Treasurer and barons of the Exchequer as appertaining to the King; and *order taken that no proceedings should be granted until Michaelmas after*; that in the meantime search might be made for the King's title."

24. "John, earl of Pembroke, being in the King's custody, and William la Zouch, of Harringworth, cousins and heirs of William Cantlow, shew that where Thomas, the son and heir of Sir Robert Roos, of Igmanthorp, sued them for certain lands in the shire of York, which late were the said William's, supposing certain feoffments to be made by the said William, without condition, for the advantage of this complaint. And *for that the said Thomas sought to come to the trial of the country which he had corrupted, they required redress and trial by the parliament.*"

25. "The matter was committed to *John Knevit*<sup>52</sup> and *John Cavendish*,<sup>53</sup> Chief Justices, and to *Robert Belknap*, Chief Justice of the Common Pleas, to examine and make report, who did so at large; whereby it falls out that the said feoffments were made upon condition, as may there appear."

6. *Sir Richard le Scrope succeeded as Chancellor by Simon de Sudbury, Archbishop of Canterbury, who opened parliament in November 1380. Its poll tax; and its statute.*

In 1379, on July 2, *Richard le Scrope* retired from the chancellor-

<sup>52</sup> Though Sir *John Knyvet* (as stated in ch. 19, § 52, p. 625,) ceased on the 11th of Jan., 1376-7, to be chancellor of England, yet he may have attended parliament in 3 Ric. II. He was one of the executors of the will of Edw. III, dated Octo. 7, 1376, and lived several years after, dying in 4 Ric. II. By his wife,

Alianora, the elder daughter of Ralph, Lord Basset, of Weldon, he left a son, whose descendents flourished till the end of the seventeenth century. Foss's Biogr. Jurid.

<sup>53</sup> Sir *John de Cavendish* (mentioned in ch. 19, § 48, p. 616,) graced the judicial bench for ten years. *Id.*

ship.<sup>54</sup> He was succeeded by *Simon de Sudbury*,<sup>55</sup> archbishop of Canterbury.

*Sudbury*—whether he became chancellor July 4, 1379, as supposed by Lord Campbell and Mr. Foss, or not until Jan. 27, 1380, as stated by Mr. Stubbs<sup>56</sup>—opened the parliament at Northampton in 4 Ric. II<sup>57</sup> and mentioned the necessity of aid to the king; the commons, through their speaker, Sir *John Oldersburgh*, desired a fuller declaration of the king's necessity, and what sum total he would require. Whereupon a schedule being delivered containing particular charges amounting to £ 150,000, there was after long debate a grant.

"Of every person, being man or woman, passing the age of 15 years, and being no beggar, 12 pence, to be levied of every person of every parish, according to their estate; so as the rich doth bear with the poor, and that the richest, for him and his wife, be not set above 20 shillings, and the most poor, for him and his wife no less than one groat."<sup>58</sup>

<sup>54</sup> He resumed military duties in Scotland under the Duke of Lancaster, and was appointed warden of the Western Marches. Foss's Biogr. Jurid.

<sup>55</sup> The family name was *Thebaud*, or *Tibbald*. At the time of his birth, his parents, Nigel and Sarah Thebaud, resided at Sudbury, in Suffolk. He assumed the name of his native place. Being sent abroad while a young man, he distinguished himself in several foreign schools; and in France took the degree of Doctor of the canon law. He was received with favour by Pope Innocent VI, who appointed him one of his chaplains and auditor of his palace; by which office he is designated in a mandate of King Edward III, July 7, 1358. By the pope's influence he was made chancellor of Salisbury in 1360, and bishop of London in 1361. In the arrangement of truces and treaties of peace the king frequently required his services while he held this see; and he continued

to perform such duties after he became archbishop of Canterbury (May 26, 1375). While bishop of London he was a munificent benefactor to his native town; while archbishop of Canterbury he expended large sums on the cathedral. *Id.*

<sup>56</sup> 2 Const. Hist., ch. 16, p. 448, note 3.

<sup>57</sup> It was summoned for "the Monday next after the feast of All Saints." On that day, "in a chamber within the Priory at S. Andrews, "the archbishop of Canterbury and chancellor caused the great charter to be read;" and the parliament was adjourned to meet Thursday, on which day the king, accompanied by sundry bishops and some lords temporal, came into that chamber, "whereunto were called the king's justices, serjeants, advocates and commons." Cotton's Abr., p. 188. This parliament sat till December 6. 2 Stubbs's Const. Hist., ch. 16, § 5, p. 448.

<sup>58</sup> Cotton's Abr., p. 189, No. 10 to 15.

The only statute made at Northampton in 4 Ric. II. which is in Statutes of the Realm, is that on page 17.<sup>59</sup>

7. *In 1381 discontent; course of the insurgents. Among their outrages were the murder of Chancellor Sudbury and Chief Justice Cavendish; both men of high character. Conduct to the Chief Justice of the Common Pleas; and to jurors and clerks. Of the King's presence of mind; his delivering to the villeins charters of emancipation, and his other steps to crush the revolt.*

In 1381, prominent causes of discontent were the grievance of villenage; and constant pressure of taxation; this last was aggravated by a poll tax, under an enactment bad in itself, and made worse by the manner of its execution; especially among the tylers,<sup>60</sup> a body of artisans.<sup>61</sup>

In Essex where sat Robert Bealknap, chief justice of the Common Pleas, riots began in May; there the rioters are said to have been guilty of atrocious conduct in murdering jurors and and clerks."<sup>62</sup>

In Kent Wat Tyler joining a priest named John Ball who 'had ben thre tymes in the bysshop of Canterburie's prison' (Froissart, i. 640), and another man called Jack Straw, having on their way to

<sup>59</sup> In the margin is i. "Vessels of wine, honey and oil imported, shall be gauged;" ii. "The king's pardon of escapes of felons."

<sup>60</sup> Collyer's Engl., p. 170, edi. 1775; 2 Turner's Engl., ch. 5, p. 243; 2 Stubbs's Const. Hist., ch. 16, p. 450 to 458. At Dartford one of the collectors had demanded the tax for a young girl, a Tyler's daughter. Her mother maintained that she was under the age required by the statute: the officer was proceeding to ascertain the fact by an indecent exposure of her person, when her father (who had just returned from work) with a stroke of his hammer beat out the offender's brains. His courage was applauded by his neighbours." 4 Lingard's Engl., ch. 3, p. 175; 1 Mackintosh's Engl., p. 265, of Phila. edi. 1830.

<sup>61</sup> The following Tylers are mentioned: 1, Walter Tyler, of Essex; Arch. Cant. iii, 93; 2, Wat Tyler, of Maidstone; Stow. Chr., p. 284, '*de countee de Kent*'; Rot. Parl. iii, 175; 3, William Tegheler, of Stone street; Arch. Cant. iii, 91. 4, John Tyler, of Dartford, whose revenge for the outrage on his daughter caused the outbreak there; Stow. Chron., p. 284. He is clearly a different person from Wat Tyler, of Maidstone, who is mentioned on the same page. 5, Simon Tyler, of Cripplegate; Rot. Parl. iii, 112." 2 Stubbs's Const. Hist., ch. 16, p. 456, note 1.

<sup>62</sup> 2 Turner's Engl., ch. 5, p. 244. But there was no personal injury to Chief Justice Bealknap. Foss's Biogr. Jurid.

London, stopped at Canterbury, they dismantled the palace of the archbishop. On reaching Blackheath (June 12, 1381) they sent Sir John Newton, the governor of Rochester castle, whom they had forced to accompany them, to the King, then in the Tower of London, to represent how ill-governed the kingdom had been 'and specially by the archbyssshop of Caunterberie, his chancellor, whereof they wolde have accompt,' and to desire that the King himself would come and hear their complaints. The archbishop on that day resigned the Great Seal into the King's hands, the record saying that he did so 'for certain causes.'<sup>63</sup> On the 13th (of June) the insurgents entered the city of London.

"Their cry was against the duke of Lancaster and the ministers who held the King in durance, especially the archbishop who was chancellor and the Prior of the Hospitallus Sir Robert Hales, who had recently undertaken the office of treasurer."<sup>64</sup>

"The members of the council saw with astonishment the sudden and rapid spread of the insurrection, and bewildered by their fears and ignorance, knew not whom to trust or what measures to pursue."<sup>65</sup>

"Early on the morning of the 14th the King rode to Mile End, and by promising to fulfil the wishes of the Essex villeins prevailed on them to return home. As soon as he left the Tower, the Kentish leaders entered, and, after insulting the Princess of Wales and running riot in the royal chambers, murdered the chancellor and treasurer; an Essex man beheaded the archbishop but the Kentish leaders were aiding and abetting the common outrage and cruelty."<sup>66</sup>

"The character of the archbishop, as represented by historians," might be esteemed "such as to make him least liable to popular hatred. He was of a liberal, free and generous spirit, admired for his wonderful parts, for his wisdom, his learning and his eloquence, and revered for the piety of his life, the charity he dispensed and the merciful consideration he universally exhibited."<sup>67</sup>

"On the 15th" (of June) "the King attempted to negotiate with the Kentish men at Smithfield; there Wat Tyler, elated by the suc-

<sup>63</sup> Foss's Biogr. Jurid, tit. Sudbury, edi. 1870, p. 642.

<sup>64</sup> 2 Stubbs's Const. Hist., ch. 16, p. 457.

<sup>65</sup> 4 Collyer's Engl., pp. 170, 171, edi. 1775; 2 Turner's Engl., ch. 5, p. 245; 4 Lingard's Engl., ch. 3, p. 177.

<sup>66</sup> 2 Stubbs's Const. Hist., ch. 16, p. 458. The head, after being paraded through the city, was suspended on Lon-

don bridge. Next day head and body were removed for interment to Canterbury, where they lie on the south part of the altar of St. Dunstan. Foss's Biogr. Jurid.

<sup>67</sup> While bishop of London he was a munificent benefactor to his native town. During the short period that he held the archbishopric of Canterbury he expended large sums on the cathedral. *Id.*

cess which he had obtained, or perhaps rendered desperate by the consciousness of yesterday's outrage, engaged in a personal altercation with Sir John Newton, whom the rebels had compelled to act as their spokesman. Sir William Walworth, the mayor, thinking the King in danger, struck down the captain of the revolt and the King's servants dispatched him with their swords. Richard's presence of mind saved himself and the state. He rode forward into the threatening host of bowmen, declaring himself their king and captain, and before they parted delivered to them the charters of emancipation which they demanded; interfering at the same time to save them from the vengeance of the body of knights and men at arms whom the Londoners had at last sent into the field. There the head of the revolt was crushed, but in the meantime the more distant shires were in the utmost disorder; at Bury S. Edmund's the Suffolk bondsmen rose on the 15th and murdered the prior of the monastery and Sir *John Cavenaish*, Chief Justice of the King's Bench."<sup>68</sup>

In his latter years, Sir *John de Cavendish* was chancellor of the University of Cambridge; retaining however the office of chief justice. He is mentioned as without an imputation of having perverted the course of justice or deviated from the path of rectitude when the insurgents plundered and burned his house; and getting hold of the venerable man, dragged him into the market place of Bury St. Edmunds and there, after a mock trial, ruthlessly beheaded him and in their endeavour to lower him, lowered themselves by their manner of dealing with his remains."<sup>69</sup>

8. In June 1381 *Hugh de Segrave* made Keeper of the Great Seal; *Robert Tresilian* Chief Justice of the King's Bench; a proclamation as to tenants of lands. Charters of manumission and pardon issued in June were annulled in July; and parliament called. In August *William de Courtneye* appointed chancellor.

In 1381 in June, "the King on the 15th," had closed the court of common pleas";<sup>70</sup> on the 16th the Great Seal was placed in the hands of *Hugh de Segrave*,<sup>71</sup> to be held by him as keeper until the

<sup>68</sup> 4 Collyer's Engl., ed. 1775, pp. 174, 175, 176; 2 Turner's Engl., ch. 5, p. 246 to 253; 1 Mackintosh's Engl., Phila. ed. 1830, p. 266. The passage in the text is from 2 Stubbs's Const. Hist., ch. 16, pp. 458, 459.

<sup>69</sup> By his wife, Alice, who died before

him, he left two sons, a descendant of one of whom became biographer of Cardinal Wolsey, to whom he was gentleman usher. Foss's Biogr. Jurid.

<sup>70</sup> 2 Stubbs's Const. Hist., ch. 16, p. 459, note 6.

<sup>71</sup> First noticed (in the records) by the



king could conveniently appoint a chancellor; till which he performed all the duties pertaining to the office. He was also made treasurer in the room of *Robert de Hales*.<sup>73</sup>

On the 22nd *Robert Tresilian* (mentioned in § 2, p. 642) was promoted to the office of Chief Justice of the King's Bench. Now his first duty being as to the insurgents, he accompanied the King to St. Albans, and proceeded there, (it is said) in a way, not deserving of commendation.<sup>73</sup>

The King, on the 30th of June, ordered a proclamation that all tenants of land, bond or free, should continue to perform their due and accustomed services; the charters of manumission and pardon issued on the 15th of June were annulled by him on the 2d of July. On the 16th there was a call for parliament.<sup>74</sup>

confirmation in 43 Edw. III of Queen's Philippa's grant to him (styled a knight) for life of the offices of constable of the castle of Brustwyk, and of keeper of the forests of Kingswood and Filwood, in Gloucestershire. (Alb. Rot., Orig. ii, 304.) He was, in 46 Edw. III, one of the commissioners to treat with the Flemings, and he held the same diplomatic character in the last year of Edward's reign. (N. Foedera iii, 932, 1076.) On the accession of Ric. II, he was selected as one of the king's counsel; in the third year he was appointed steward of the household. (Cal. Rot. Pat., 203.) In that and the following year he was one of the ambassadors to treat with France, and to negotiate the king's marriage with Anne, sister of the emperor. (Rymer vii, 161, 229, 281.) Foss's Biogr. Jurid.

<sup>72</sup> In this year Segrave had a grant of the manor of Overhall, in Essex, to hold by the service of making 'wafres,' and attending to the king at his coronation. *Id.*

<sup>73</sup> 2 Turner's Engl., ch. 5, p. 253. "He impannelled three jurors of twelve men each. The first was ordered to pre-

sent all whom they knew to be the chief of the tumult; the second gave their opinion on the presentation of the first; and the third pronounced the verdict of guilty or not guilty. It does not appear that witnesses were examined. The jurors spoke from their personal knowledge. Thus each convict was condemned on the oaths of thirty-six men." Wals. 276; cited in 4 Lingard's Engl., ch. 3, p. 182, *note*. "The executions here and in other counties are described as being most numerous, and Tresilian's cruelty as having had no parallel till the campaign of Judge Jeffreys, three centuries afterwards." Rapin iv, 25, and Newcome's St. Albans 26, are (with Lingard iv, 182,) cited in Foss's Biogr. Jurid. Mr. Foss observes that Tresilian and others "seem to have been conscious that they had greatly exceeded any warrantable license; inasmuch as in the parliament of the following November an act of pardon and indemnity was deemed expedient for those who had acted 'without due process of the law.' *Id.*

<sup>74</sup> 2 Turner's Engl., ch. 5, p. 253; 2 Stubbs's Const. Hist., ch. 16, p. 460.

On the 10th of August the King appointed *William de Courteneye*,<sup>75</sup> Chancellor of England, and assented to his election as Archbishop of Canterbury.

9. *In November 1381, parliament opened by William de Courteney, Chancellor of England and Archbishop of Canterbury. In this parliament was the question of manumission. During this session Archbishop Courteneye resigned the chancellorship and was succeeded by Sir Richard le Scrope. Statute passed. A commission to enquire as to abuses and promote reform. Of Richard's marriage to Anne of Bohemia; and the general pardon granted at her request.*

There was an adjournment from the day for which Parliament was called in 5 Ric. II (1381).<sup>76</sup> On Saturday, the ninth day of November, "the King being in Parliament, and the Council being called by their names, *William Cant*,"<sup>77</sup> elect and confirmed Chancellor of Eng-

<sup>75</sup> Grandson of Hugh de Courteneyc, earl of Devon, being fourth son of Hugh the second earl, by Margaret, daughter of Humphrey de Bohun, earl of Hereford, and Elizabeth, a daughter of Edward I. He was born at Exminster about 1327, was educated at Oxford, where he took the degree of Doctor of Civil law, and was afterwards chancellor of that university. Soon he had rich benefices, among which were prebends at Exeter, Wells and York. He was elevated to the bishopric of Hereford in 1369, and thence translated, in 1375, to London. Towards the end of Edward's reign, when Bishop Courteneye, in obedience to the Pope's mandate, summoned John Wickliffe to be examined, he was attended by John of Gaunt, Duke of Lancaster, to St. Paul's church. There some violent words between the duke and the bishop ended in an unseemly threat on the duke's part. The assembled people as yet cared little for the religious question, but fancying their bishop in danger, prepared to defend him, and by their clamour compelled the duke, who was no favorite with them, to

retire. The populace outside, excited by other reports, joined in the outcry, and the ferment was not appeased till they had broken open the Marshalsea prison, ransacked the duke's house on the Savoy, and contemptuously dragged his arms through the streets. Foss's Biogr. Jurid.

<sup>76</sup> "The day after All Souls." 'All Souls' day' being Nov. 2; and that in 5 Ric. II, falling on Saturday, there was an adjournment first to Monday, then to Tuesday, and then to Wednesday. "On which Wednesday for that great debate rose between the Duke of Lancaster and the Earl of Northumberland, so as great force of arms, men and archers, armed in warlike manner on both sides, came to the parliament, whereof great complaint being made to the king, the king, with his council and nobles, were much busied to appease the same; the king therefore adjourned the same parliament till Saturday after." Cotton's Abr., p. 195.

<sup>77</sup> *William de Courteney*, Archbishop of Canterbury.

land, began to declare the cause of the Parliament"; making his oration '*in English*.' The Monday (or Wednesday) after, Sir *Hugh Segrave*, Treasurer of England, by the King's commandment declared the especial cause; stating, among other things, that in the 'horrible tumults' the King "was enforced to grant manumissions to the bondsmen and others of the Realm, as on them having kingly power, under the Great Seal of England; the which he knowing to be done against law, willed them to seek remedy accordingly due for the confirmation or revocation thereof."<sup>78</sup>

Chancellor *Courtney* may have "wished so far to observe the agreement with the rustics as to introduce some amelioration into their condition."<sup>79</sup> He is represented "as having a noble presence and courtly manners, with the learning fit for his position, a clear and acute understanding; and" as being "a favorite with the monks of his cathedral."<sup>80</sup> Yet one of the petitions of the Commons was "that the most wise and able man in the realm may be chosen chancellor, and that he seek to redress the enormities of the chancery."<sup>81</sup> Whatever may have been the cause, certain it is that the rest of the proceedings at this session were led not by Courteneye, but by Sir *Richard le Scrope*; and Sir Richard is spoken of on Nov. 18 as '*lors nouvellement crees en Chancellor d' Engleterre*.'<sup>82</sup>

Nov. 18 the Commons came into the Parliament to present Sir *Richard Walsgrave*, knight, whom they had chosen their speaker," and through him "required a more full declaration of the King's meaning."<sup>83</sup>

<sup>78</sup> Wishing them thereof to have due consideration," he "wished the Commons to depart to their accustomed place within the abbey of Westminster. Cotton's Abr., pp. 195, 196.

<sup>79</sup> 2 Stubbs's Const. Hist., ch. 16, p. 461.

<sup>80</sup> (Godwin, 120, 186; Weever, 225, 285.) Foss's Biogr. Jurid.

<sup>81</sup> Cotton's Abr., p. 197, No. 20.

<sup>82</sup> 2 Stubbs's Const. Hist., ch. 16, p. 462, note 1; also Foss's Biogr. Jurid. Mr. Foss speaks of Archbishop Court-

ney's liberal donations, among others to the church of Exminster, his native town; he had restored the church of Mepham, and entirely rebuilt Maidstone church. To his Cathedral church he gave rich presents, besides contributing largely to the erection of the Nave. He died at his palace at Maidstone on July 31, 1396. There is an epitaph on his grave-stone, in Maidstone church, where he was buried, and a monument to his memory in his Cathedral church. *Id.*

<sup>83</sup> Cotton's Abr., p. 196.

"The King, therefore, appointed Sir *Richard le Scrope*, knight, and created chancellor, to do the same, who did so, and namely, touching the repeal of the manumissions made to the bondsmen."

Whereto all the Commons cried with one voice that the "repeal" was good and lawful; adding that such infranchisement could not pass without their consents; and so upon the prayer of the Commons, the same repeal was by assent confirmed."<sup>84</sup>

After the words on page 655, mentioning *Richard le Scrope* as '*lors nouvellement crees en Chancellor d' Engleterre,*' Mr. Foss says:

"It is curious, however, that according to the record on the close roll, Bishop *Courteneye*, the late chancellor did not give up the Seal till November 30, and *Richard le Scrope* did not receive it till December 4. Thus was he a second time chancellor."<sup>85</sup>

Parliament had to deal not only with villenage, but also with the general administration.<sup>86</sup> The statute made at Westminster in 5 Ric. II, is in 2 Stat. of the Realm, p. 17 to 23.<sup>87</sup>

<sup>84</sup> *Id.*, p. 196. "Both Lords and Commons unanimously replied that no man could deprive them of the services of their villeins without their consent; that they had never given that consent and never would be induced to give it either through persuasion or violence." 4 Lingard's Engl., ch. 3, p. 183.

<sup>85</sup> Biogr. Jurid.

<sup>86</sup> Cotton's Abr., p. 197, No. 19, 20, *et seq.* No. 20 is cited in Legal Judic. in Ch., edi. 1727, p. 14. Hall. Mid. Ages, ch. 8, part 3, Phila. edi. 1824, pp. 110, 111.

<sup>87</sup> The following words are in the margin of the respective chapters. i. "Liberties of the church and charters and statutes confirmed." ii. "Exportation of gold and silver forbidden, except for payment of the King's forts beyond sea and by the King's license, by exchanges in England to pay beyond sea. Penalty on merchants exporting gold or silver under colour of exchanges. None shall depart from the realm without the King's license; exceptions thereto; ports for embarking; the penalty of the master of

the ship offending; the penalty of searchers or wardens of ports offending." iii.

"No subject shall import or export merchandizes but in ships of the King's leigeance." iv. "Prices of several sorts

of wine to be sold in gross or by retail; upon refusal of the merchant to sell, mayors, &c., may deliver to the buyer the wines at the prices set; allowance of extra price for carriage; sweet wines shall not be retailed." v. "The King's

pardon to those that repressed or punished his rebels." vi. "All manumissions, releases and bonds made, in the

last tumults, by compulsion, shall be void; treason to begin a riot and rumour." vii. "Forcible entries forbidden." viii. "A remedy in case of

writings burned in the said tumults." ix. "Defendants in the Exchequer may plead and sue their discharge without the King's writ or letter." x. "Imprest

accounts in the Exchequer of persons retained to serve the King in his wars or embassies; covenants for such service shall be in writing and sent into the Ex-

chequer, and likewise the repeals and

A commission for reform of the household, to begin with the person of the King himself,<sup>88</sup> was elected with John of Gaunt at its head.<sup>89</sup> In *William of Wykeham* confidence was evinced by his being appointed one of the commissioners to enquire into abuses, and to investigate the causes of the recent insurrections.<sup>90</sup>

*Michael de la Pole*,<sup>91</sup> in 1383, went to Rome, to the King of the Romans and Bohemia, to treat for the marriage of King Richard with Anne, sister of King Wincellaus. On her way to England she was taken prisoner; but her release was obtained;<sup>92</sup> and in her sixteenth year she was "married to the King in the chapel of the palace of Westminster, the twentieth day after Chrtstmas." After being some days at Windsor, they returned to London: there she was crowned;

countermands thereof; sums due to such persons shall be paid on certificate thereof." xi. "For the shortening Exchequer accounts." xii. "Two clerks of accounts sworn in the Exchequer." xiii. "Accounts of *nihil* shall be discharged on oath of accountants." xiv. "The clerk of the Pipe and Remembrancers shall be sworn in the Exchequer to execute writs for discharges and shall certify to each other the respective discharges." xv. "Upon any judgment of livery sent into the Exchequer, the remembrancer shall discharge the party." xvi. "Fees of clerks for commissions, &c."

Chapter vii is retained in 1 'Statutes Revised,' edi. 1870, p. 227.

<sup>88</sup> "The king appointed sundry bishops, lords and nobles to set in privy council about these matters, who, since that they must begin at the head, and go at the request of the Commons, they, in the presence of the king, charged *his confessor not to come into the court, but upon the four principal feasts.*" Cotton's Abr., p. 196. It is stated that "the Commons had prayed that he might be removed from his office." 2 Stubbs's Const. Hist., ch. 16, p. 462,

note 3.

<sup>89</sup> 2 Stubbs's Const. Hist., 462.

<sup>90</sup> Foss's Biogr. Jurid.

<sup>91</sup> He, long before the death of his father, William de la Pole (mentioned in ch. 19, § 13, p. 556), was engaged in the French wars; in 1355, in the retinue of Henry, duke of Lancaster, and, in 1359, accompanying the Black Prince. (*N. Fadera* iii, 443.) His commission, in 50 Edw. III, as admiral of the king's fleet in the northern seas, was renewed in 1 Ric. II. (*Ibid.*; Rymer vii, 172.) In 2 Ric. II, his talents in diplomacy were tried in two missions, one to the court of Rome, and the other to treat for a marriage between King Richard and Catherine, daughter of Barnabo, 'Lord of Millaine,' which was not successful. In the parliament of 5 Ric. II, he was appointed one of the counsel to regulate the household. (Rot. Parl. iii, 104.) Foss's Biogr. Jurid.

<sup>92</sup> Michael de la Pole, in Jan., 1384, received a payment of £933, 16s. 8d. for his expenses in going to the court of Rome to treat for the marriage, and for the money paid for her release; *Id.*; citing Devon's Issue Roll, 224.

and "at the young queen's earnest request a general pardon was granted by the King."<sup>93</sup>

10. *Parliament of May 1382 opened by Sir Richard le Scroop, Chancellor. Its statute in 5 chapters. Lord Coke's observations upon the fifth chapter; extraordinary commissions contemplated to emanate from the Chancellor; despotic powers might be exercised thereunder.*

In 5 Ric. II, parliament was summoned to "Wednesday next after John Port. Latin;"<sup>94</sup> and adjourned until Thursday. On that day (May 7, 1382),<sup>95</sup> "Sir Richard le Scroop, knight, Chancellor of England," declared for what the Parliament was called.<sup>96</sup>

The King's mandate, dated at Westminster the twenty-sixth day of May,<sup>97</sup> promulgates what is called "Ordinances and agreements made in the Parliament"; and also called "Statute the second."<sup>98</sup> It is in *five* chapters.<sup>99</sup> The enactment of the *fifth* is said to have

<sup>93</sup> Froissart's Chronicles, N. Y. ed. 1858, p. 295; Cotton's Abr., p. 198, No. 15; 4 Lingard's Engl., ch. 3, p. 185; Miss Strickland's Queens of Engl., vol. 2, p. 209, of Phila. ed. 1857; 2 Stubbs's Const. Hist., ch. 16, p. 462.

<sup>94</sup> Cotton's Abr., p. 193. The day of "St. John, before Latin Gate," is May 6.

<sup>95</sup> "The king, with sundry bishops and lords, came into the Chamber *de Pinet* at Westminster, whereunto all the Commons by name were called." Cotton's Abr., p. 193.

<sup>96</sup> *Id.* The king wanting 'three score thousand pounds,' merchants were conferred with, and the Commons made relation to the lords, "That the merchants fearing the example of *Michael de la Pool* and other merchants, who in the like shifts were undone, and yet had but little gain, doubted to do the same." *Id.*, pp. 193, 194, No. 11; 4 Lingard's Engl., ch. 3, pp. 184, 185, *note*.

<sup>97</sup> The parliament sat from May 7 to May 22, and its acts were promulgated on the 26th. 2 Stubbs's Const. Hist.,

ch. 16, p. 465.

<sup>98</sup> 2 Stat. of the Realm, p. 23 to 26.

<sup>99</sup> In the margin of the chapters is—  
i. "Merchant strangers may freely come into, continue in and depart from the realm." ii. Wood, leather and woodfells may be exported except to France; abatement of half a mark to such as will pay before hand; no repeal or countermand of immunity shall be made after such payment; the subsidy to be applied in defence of the realm, &c." iii. "Offer of mariners to serve at sea; grant of tonnage and poundage; produce thereof to be applied to the safe-keeping of the sea; collectors thereof; comptrollers; the mariners shall divide their gains; the admirals shall save harmless the king's allies." iv. "Every one shall obey his summons to parliament; penalty on sheriffs omitting returns of writs to parliament." v. "Enormities ensuing the preaching of heresies; commissions shall issue to arrest such preachers."

Chapter iv is retained in 1 'Statutes Revised', ed. 1870, pp. 228, 229.

been urged by the ex-chancellor, Archbishop *Courteneye*, for the purpose of repressing doctrines which Wyckliffe's supporters were spreading at Oxford and in the country at large.<sup>100</sup> As to that fifth chapter, the statement in Cotton's Abr.<sup>101</sup> is supported by Ld. Coke's observations:<sup>102</sup>

"There was a statute supposed to be made in 5 R. II, that commissions should be *by the Lord Chancellor* made, and directed to sheriffs and others, *to arrest such as should be certified into the chancery*, by the bishops and prelates, masters of divinity, to be preachers of heresies and notorious errors, their fautors, maintainers and abettors, and *to hold them in strong prison* until they will justify themselves to the law of holy church. By colour of this supposed act, certain persons that held that images were not to be worshipped, &c., were holden in strong prison until they (to redeem their vexation) miserably yielded before these masters of divinity to take an oath, and did swear to worship images, which was against the moral and eternal law of Almighty God. We have said (by colour of the said supposed statute, &c.,) not only in respect of the said opinion, but in respect also that the said supposed act was in truth never any act of parliament, though it was entered in the rolls of the parliament, for that the commons never gave their consent thereunto. And therefore in the next parliament, the commons preferred a bill reciting the said supposed act, and constantly affirmed that they never assented thereunto, and therefore desired that the said supposed statute might be annulled and declared to be void: for they protested that it was never their intent to be justified, and to bind themselves and their successors, to the prelates, more than their ancestors had done in times past. And hereunto the king gave his royal assent in these words: *Y pleist au roy*. And mark well the meaning of the penning the act; for seeing the commons did not assent thereunto, the words of the act be 'It is ordained and assented in this present parliament, that,' &c. And so it was, being but by the king and the lords."

After stating how, in ancient times, acts of parliament were engrossed, sent to sheriffs of counties and proclaimed therein, and how in 5 Ric: II '*John Braibrok*, bishop of London, being Lord Chancellor of England,' caused the ordinance of the king and lords to be proclaimed as an act of parliament, Lord *Coke* says:

"But in the parliamentary proclamation of the acts passed in *anno*

<sup>100</sup> 3 Stubbs's Const. Hist., ch. 19, p. 355. An account of "proceedings against John Wickliffe" is in 1 State Tr.,

p. 67 to 90.

<sup>101</sup> P. 194, No. 17; p. 285, No. 52.

<sup>102</sup> 12 Rep., pp. 57, 58.

6 R. II, the said act of 6 R. II, whereby the said supposed act of 5 R. was declared to be void, is omitted: and afterwards the said supposed act of 5 R. II was continually printed, and the said act of 6 R. II hath, by the prelates, been ever, from time to time, kept from the print."<sup>103</sup>

11. *Sir Richard le Scrope's honesty. In 1382, July, the Great Seal delivered to the King, and then to Commissioners. In September Robert de Braybroke became Chancellor. His part in parliaments of October 1382, and February 1383. David Hannemere, judge in that month. Braybroke removed from the chancellorship in March.*

Sir *Richard le Scrope* did not remain chancellor the whole of 1382,

"His straightforward honesty inducing him to remonstrate with his royal master against giving inconsiderately away the lands that fell to the crown. The King, incensed at the interference of his minister, is said by Walsingham to have sent messenger after messenger to demand the Great Seal, which the chancellor refused to give up to any other person than the King himself. The entry on the record seems to support this relation and plainly evidences a hasty proceeding. It alleges that the King being desirous that *Scrope* should be exonerated from the office, the Seal was delivered up to him *ut debuit*, and though he was not as yet provided with a chancellor; but being unwilling that the affairs of the kingdom should be retarded for want of a seal, he delivered it to certain commissioners, to be kept at his will. This occurred on July 11, 1382."<sup>104</sup>

The commissioners were, at first, *Hugh de Segrave*,<sup>105</sup> *William de*

<sup>103</sup> 3 Inst., 40, 41. "Or, rather by the craft of the bishops and the then chancellor." 12 Rep. 58. As to important facts so stated in volumes of Cotton and of Coke, there are concurring statements in 4 Collyer's Engl., p. 214; 2 Hume's Engl., ch. 1, pp. 320, 321; 1 State Tr., p. 87; 2 Hall. Mid. Ages, ch. 8, part 3, Phila. edi. 1824, p. 131; 2 Stubbs's Const. Hist., ch. 16, p. 470, note 2; Green's Short Hist., ch. 5, § 5, p. 273; Hist. of Engl. Peop., book 4, ch. 4, vol. 1, p. 495.

<sup>104</sup> Foss's Biogr. Jurid. The king's irritation, however, seems soon to have subsided, since *Scrope* was, in the same year, appointed to negotiate a truce with Scotland. Although between fifty and

sixty years of age, he exhibited no diminution of his military ardour, but was present with his old patron, the Duke, at the capture of Edinburgh in 1384, and joined King Richard's expedition against Scotland in the following year. His controversy with Sir Robert Grosvenor, in the Court of Chivalry, is mentioned by Mr. Foss as "the subject of a most interesting work by the late Sir Harris Nicolas." During the remainder of Richard's reign, *Scrope* was a regular attendant on his parliamentary duties." Biogr. Jurid.

<sup>105</sup> Mentioned in § 8, p. 652. Segrave continued treasurer till Jan. 17, 1386, about which time he died. Foss's Biogr. Jurid.



*Dighton*<sup>106</sup> and *John de Waltham*,<sup>107</sup> but *Walter de Shirlawe*<sup>108</sup> having in this year succeeded Dighton as keeper of the Privy Seal, was on the 8th of August added to the commission, and with the other three had custody of the Great Seal from that day to September 20, 1382.<sup>109</sup>

The name of the next Lord Chancellor was not *John Braibrook*, as printed in 3 Inst., 4, but was *Robert de Braybroke*.<sup>110</sup> He was appointed chancellor Sept. 9, 1382 (6 Ric. II), but did not receive the Seal till the latter part of the month.<sup>111</sup>

The causes of the parliament at Westminster in 6 Ric. II (1382), October,<sup>112</sup> were pronounced by "the Bishop of London, Chancellor of England," and the next day mentioned by "the Bishop of Hereford."<sup>113</sup> This parliament sat "from Octo. 6 to Octo. 24."<sup>114</sup> As to

<sup>106</sup> In 47 Edw. III, his name as canon of St. Paul's, London, is attached to the treaty with the King of Portugal. In 48 Edw. III, when granted letters of protection to accompany the Duke of Brittany abroad, he is called 'clericus;' and described as '*alias dictus Willielmus Marmoyne*.' In the early part of the reign of Ric. II, he was made keeper of the Privy Seal; after leaving this office, and as late as 9 Ric. II, he is still called canon of St. Paul's. *Id.*

<sup>107</sup> Keeper of the Rolls.

<sup>108</sup> According to tradition he was son of a sieve maker, and was born at Swine, in Holderness, Yorkshire. Educated at Durham College, Oxford, he took the degree of Doctor in Laws, or, as he is frequently called, 'Decretorum Doctor.' It is inferred that he was one of the clerks in chancery, as he is named a receiver of petitions in the parliament of Jan., 1377, a function usually assigned to that class of officers. He held the same position in the first four parliaments of Richard II. As was usual with chancery clerks, he soon received ecclesiastical dignities. He was made dean of St. Martin's, in London, and held that rich benefice on April 26, 1377, when he

was sent by King Edward as one of the ambassadors to France. (*N. Fœdera* iii, 1076.) In the beginning of the next reign he was in other diplomatic missions. (Rymer vii, 223, 229.) About 1381 he became treasurer of Lincoln and archdeacon of Northampton, and soon after archdeacon of the East Riding of York. Foss's Biogr. Jurid.

<sup>109</sup> *Id.*

<sup>110</sup> A descendant of Henry de Braybroc mentioned in ch. 15, § 8, pp. 289, 290, and § 10, p. 292. Robert was a younger son of Sir Gerard Braybroke (who died in 1359) by his wife Isabella. Educated for the church, he successively became a canon of Lichfield, archdeacon of Cornwall in 1376, dean of Salisbury in 1380, and bishop of London Sept. 9, 1381, as successor of William de Courteneye. Foss's Biogr. Jurid.

<sup>111</sup> *Id.*

<sup>112</sup> It was summoned for "the Monday in the Octaves" (or Utas) "of Saint Michael," and adjourned until Wednesday. Cotton's Abr., 281. The day of St. Michael is September 29.

<sup>113</sup> Cotton's Abr., p. 281.

<sup>114</sup> Stubbs's Const. Hist., ch. 16, p. 465, note 1.

'Statute the first,'<sup>115</sup> the mandate of the King is dated the twenty-sixth day of October.<sup>116</sup>

"Master *Robert Braybrock*, bishop of London and Chancellor of England," declared the cause of the parliament at Westminster in February, 6 Ric. II (1382-3).<sup>117</sup>

"After the Commons had debated two days of the same charge, they besought the King to assign to them certain Lords there named to consult with them, which was granted."<sup>118</sup>

After which there was long deliberation;<sup>119</sup> and there was made the statute called 'Statute the second' in 6 Ric. II.<sup>120</sup>

<sup>115</sup> 2 Stat. of the Realm, p. 26 to 30.

<sup>116</sup> *Id.* In the margin of chapters are the following words as to their nature. i. Liberties of the church, &c., confirmed. ii. Action of debt and account shall be brought in their proper counties. iii. How writs of nuisance called *viconi tiels* shall be pursued. iv. "Exemplifications of enrollments of deeds destroyed in tumults shall be of the same force as the originals." v. Justices of assize, &c., shall hold their sessions in principal towns. vi. "Where after rape the woman consents, both parties shall be disabled to take by inheritance, dower or jointure; the husband or next of kin may prosecute for the rape; defendants may not wage battle; saving of escheats." vii. "Statute 5 Ric. II, st. 1, cap. 4, recited; sweet wines may be sold by retail." viii. Statute 5 Ric. II, st. 1, cap. 3, recited; where no English ships are to be had, merchants may bring or carry forth their merchandizes in other ships." ix. "No victualler shall exercise a judicial place in any city or corporate town." x. "Aliens in amity with the King may bring in victuals and sell them." xi. "Hosts in cities, towns, &c., on the sea coasts shall not forestall fish or other victuals"; fish mongers of London may not buy fresh fish to sell again except eels, &c." xii. "All chief officers of towns corporate shall be sworn to ob-

serve the aforesaid ordinance of victualers"; xiii. "The King's pardon to his subjects after the late insurrection; exceptions."

Chapter ii is retained in 1 Statutes Revised, ed. 1870, p. 229.

<sup>117</sup> The Parliament was summoned for "the Monday in the third week in Lent" being the 24th of February; and adjourned to the next day; being that whereon the chancellor declared the cause. Cotton's Abr., pp. 286, 287.

<sup>118</sup> "Albeit it were at the election of the King to assign these Lords or others at his pleasure." *Id.*, p. 287. Rot. Parl. 5 R. II, p. 100, 6 R. II, Sess. 1, p. 134 and p. 135, are remarked on in Hall Mid. Ages, ch. 8, part 3, Phila. ed. 1824, p. 113.

<sup>119</sup> After long deliberation of the Commons they "came into the parliament before the king's presence and the lords, when Sir *James Pickering*, knight, then speaker," "spake not by way of counsel, but to show their advice: whereto, for the king was said, a little difference to be between counsel and advice." Cotton's Abr., pp. 287, 288. Mr. Stubbs mentions that this parliament "sat from Feb. 23 to March 10." 2 Const. Hist., ch. 16, p. 465, note 2.

<sup>120</sup> 2 Stat. of the Realm, pp. 30, 31. The marginal statement is—i. "Liberties of the church and charters confirmed.

In 1383 *David Hannemere*<sup>121</sup> was constituted a judge of the King's Bench on Feb. 26.<sup>122</sup>

*Braybroke* was removed from the chancellorship on March 10 (1383); the record delicately suggesting that he 'desired with great earnestness to be removed from the office.'<sup>123</sup>

12. In 1383 *Michael de la Pole* made Chancellor, in March; occupied in parliament in October. Statute then made; its operation upon a trust or use for an alien.

*Michael de la Pole* (mentioned in § 9, p. 657), was constituted Chancellor of England March 13, 1383.<sup>124</sup>

"In 7 Ric. II (1383), in October,<sup>125</sup> 'in the chamber *de pinct*, at Westminst.,' 'Sir *Michael de la Poole*, Knight, being Chancellor, began first to excuse his unworthiness to that place, and declared

ii. "Statutes of purveyors confirmed."

iii. "The pardon granted in the preceding parliament confirmed; the men of St. Edmund's Bury shall sue their pardons specially." iv. "Action for trespasses done in the insurrection limited."

v. "Defendants in such actions may purge themselves by compurgators proving compulsion."

<sup>121</sup> Grandson of Sir John Mackfel, constable of Carnarvon castle in the reign of Edw. I, who assumed the name of Hannemere from the town so called in Flintshire; which belonged to him. David appears as an advocate in the Year Books from 45 Edw. III; and, on the accession of Ric. II, was appointed one of the king's serjeants and 'narrator' in all the courts. Foss's Biogr. Jurid.

<sup>122</sup> And from that time till the parliament of October, 1386, was among the triers of petitions. He died in 1387, before October 25, and probably before August 25. He had besides a daughter Margaret, who married the renowned Owen Glendower, two sons, Griffith and Jenkin, from the latter of whom sprang a

succession of knightly descendants, embracing Sir Thomas Hanmer, who was speaker of the House of Commons in the reign of Queen Anne, and distinguished by his edition of Shakspeare's works. *Id.*

<sup>123</sup> The remainder of his life, which extended till August 27, 1404, was devoted to his episcopal duties. He was buried in his own cathedral. His body was seen in 1666, after the fire in London, when St. Paul's was burnt. Pepys in his Diary, under date of Nov. 12, states that he "did stop (the Duke of York being just going away from seeing of it) at Paul's, and in the Convocation-House yard did there see the body;" that by some it was 'admired for its duration,' and there were 'many flocking to see it.' Mr. Foss refers to 'Notes and Queries' (2d s. iii, 186,) for 'a curious account of its subsequent mutilation.' Biogr. Jurid.

<sup>124</sup> Foss's Biogr. Jurid.

<sup>125</sup> "The parliament was summoned for "the Monday next before the feast of all Saints," being October 25, and was adjourned until next day. Cotton's Abr., p. 290.

that he was forced thereto, which done, he sheweth the cause of the Parliament."<sup>126</sup>

On the 16th of November "proclamation was made that all such as had received any money beyond the seas, of the enemy, or of any other, for any cause other than for due wages, should the next day bring the same into the *Chancery*, or else to be taken as traitors."<sup>127</sup>

There being grave accusations against several, the Chancellor was much engaged in discussion during the remainder of the session. Supporting charges against the Bishop of Norwich as military commander, the Chancellor concludes thus:

"Although the King might pass on the Bishop, as on a temporal Lord, by reason that he took upon him to serve him as a soldier, and had the sword carried before him contrary to his profession, yet for that time the King would spare to lay hands on his person, for his imprisonment; but for his other defaults and villainies, the Lords, by assent of the Parliament, had adjudged him to make fine and ransom at the King's pleasure, whereto he should be compelled by the seizure of his temporalities; and it was commanded him from thenceforth no longer to have the sword carried before him."<sup>128</sup>

This parliament sat "from Octo. 26 to Nov. 26."<sup>129</sup> As to its statute, the King's mandate is dated Nov. 26.<sup>130</sup> As to aliens, the statutes of 3 R. II, c. 5, and 7 R. II, were cited in succeeding centuries.

<sup>126</sup> *Id.*, pp. 290, 291.

<sup>127</sup> Cotton's Abr., p. 292, No. 16.

<sup>128</sup> *Id.*, p. 293, No. 23.

<sup>129</sup> 2 Stubb's Const. Hist., ch. 16, p. 465, note 2.

<sup>130</sup> 2 Stat. of the Realm, p. 32 to 36. Its marginal notes are as follows: i. "Liberties of the church confirmed." ii. "The charters and statutes confirmed." iii. "For trespasses within the forest, juries shall give their verdict where they received their charge." iv. "Penalty on undue imprisonment by the officers of the forest; double damages and fine to the king." v. "Confirmation of 5 Ed. III, ch. 14; justices, &c., empowered to bind over vagabonds to their good behaviour." vi. "The Statute of Winchester confirmed; every sheriff shall proclaim it quarterly." vii. "In what

case a *nisi prius* shall be granted at the suit of any of the jurors." viii. "The Statute of Purveyors confirmed and extended to servants of subjects." ix. "Statutes made against deceit in cloths to be sold, and against Aulnegers and Collectors of the subsidy of cloths confirmed; application of the forfeitures." x. "Trial of assize for rent out of land lying in two counties." xi. "The Statutes 5 Ric. II, c. 4, 5, and 6 Ric. II, c. 7, 11, 12, concerning fishmongers, victualers and vintners repealed; victualers of London shall be under the rule of the mayor and aldermen." xii. "Stat. 3 Ric. II, c. 3, recited, confirmed, and extended to aliens holding benefices in England, who shall also be liable to the penalties of 25 Ed. III, St. 5, c. 22; the king's

"At common law if an alien purchased and took a conveyance, he took it for the benefit of the crown, by prerogative. After uses invented 'twas necessary to settle where the use should go, purchased for the benefit of an alien. Therefore, stat. 3 R. II, c. 5, and 7 R. II, were made to enforce the common law prerogative which else had been evaded by the introduction of uses. The ground of it was originally a common law right; and if a trust had been created the King would have been entitled to the trust the same as to the land."<sup>131</sup>

13. In 1384 William Ford made a baron; parliament opened by Sir Michael de la Poole, the Chancellor; complaint against him adjudged slanderous and the slanderer fined.

In 1384 (8 Ric. II), William Ford was constituted a baron of the Exchequer.<sup>132</sup>

The first parliament in 1384 was continued until April 25.<sup>133</sup>

Then "the King in person, with all the Bishops and Lords, except such as were with the Duke of Lancaster, in Scotland, and the Commons; which were assembled in the Great Hall of the Bishop of Salisbury, in Salisbury, therefore richly hanged and dressed; Sr. Michael de la Poole, Lord Chancellor of England, by the King's commandment, declared the cause of the Parliament."<sup>134</sup>

It is supposed that this parliament "sat from April 29 to May 17."<sup>135</sup>

licenses, to the contrary, shall not be asked for." xiii. "No man shall ride armed contrary to the Statute-2 Ed. III, ch. 3." xiv. "For enabling parties out of the realm to appoint attorneys in writs of præmunire." xv. "Statutes 1 Edw. III, Stat. 2, c. 14; 4 E. III, c. 11; 1 Ric. II, c. 4, against maintenance, &c., confirmed." xvi. "No armour or victual shall be sent into Scotland without license of the king on pain of forfeiture thereof." xvii. "When mainperners shall be liable in damages by delay."

Chapters iii, iv, xii, xiv and xv are retained in 1 Statutes Revised, edi. 1870, p. 230 to 233.

<sup>131</sup> Sir Thomas Clarke (Master of the Rolls) in 32 Geo. II, *Burgess v. Wheate*, 1 W. Bl. 144, 1 Eden 204, 205. The Master of the Rolls then asks: "But does it hold, therefore, that a trustee

takes for the crown on death of *cestui que trust*?" and observes "the difference between taking by prerogative and escheat is material, and Lord Hale makes the distinction." The point determined, in *Burgess v. Wheate*, is adverted to in *Williams v. Lonsdale*, 3 Ves., Jr., 736.

<sup>132</sup> Foss's Biogr. Jurid.

<sup>133</sup> It was summoned for "the Friday next, after St. Mark the Evangelist;" "the same Friday being the 20th of April;" and "was adjourned until the Wednesday following, and, in the mean time, the Commons were willed together to choose their speaker." The same Wednesday the parliament was continued until Thursday following." Cotton's Abr., p. 298.

<sup>134</sup> Cotton's Abr., p. 298, No. 3.

<sup>135</sup> 2 Stubbs's Const. Hist., ch. 16, p. 466, note.

"Monday, the 10th of May, the Commons assembled, beseeching the King to grant to them for conference certain Lords and nobles there named; which was granted."

"After that the Duke of Lancaster, with other nobles, were returned, the Commons besought the King to grant to them the same Duke and his two brothers of Cambridge and Buckingham."<sup>136</sup>

"John Cavendish, fish-monger of London, made his complaint first to the Commons and after to the Lords in full parliament, requiring first, that he might have surety of the peace granted against Sir *Michael de la Pool*, Knight, Chancellor of England, and sureties for the peace for the said Chancellor; his sureties were the Earls of Stafford and Salisbury."

"That done, Cavendish sheweth that he having a weighty suit depending before the said Chancellor against other merchants, and breaking with one John Otter, a clerk of the said Chancellor's for good success, Otter undertook he should be well heard, so he would give him £10 for his travell; Cavendish himself became bound to Otter therefore, and shortly brought herring and fresh sturgeon to Otter in part of payment; which rehearsed, he would not charge the Chancellor withall, but left the Lords to judge thereof: only he said that by the Chancellor he was delayed and could have no justice at his hands; and further he saith that at a time past, the Chancellor caused him to be paid for his fish and his obligation to be cancelled, but whether of conscience he leaveth it to the Lords' judgment."

"The Chancellor, first before the Lords, and then before the Lords and Commons, affirmed himself to be innocent, and for delay and not doing justice objected against him, he avouched the justices and serjeants that were at the hearing of the case; to the rest he said that in accounting with his servants and officers, he bolted out the said herring and sturgeon to have come as a cheat, and understood also of the obligation; whereat, being greatly moved, he sent for Cavendish, and ripping up of the matter, caused him to be paid for his fish and his obligation to be cancelled; swearing by the sacrament of Jesus Christ, that he was not otherwise witting, but altogether ignorant."

"Hereupon Otter being sent for and examined, swore that the Chancellor was never privy thereunto. And the parties adverse to the said Cavendish upon their oaths affirmed that they never gave any reward to the said Chancellor."

"Whereupon the said Chancellor required his remedy against the said Fish-monger for the same, so great a slander. The Lords therefore, troubled with other weighty matters, let the said Fish-monger to bail, to answer the said Chancellor, and committed the matter to be ordered by the Justices."

"In a schedule thereto annexed is contained that Sir *Robert Tresilian*, Chief Justice of the King's Bench, *Robert Belknap*, Chief Justice of the Common Pleas, with other justices and counsellors, heareth this whole matter, condemneth the said Fish-monger, Caven-

<sup>136</sup> Cotton's Abr., p. 299, No. 9, 10.

dish, in a 1,000 marks for his slanderous complaint against the said Chancellor; and his body adjudged to prison until he had paid the 1,000 marks and made fine and ransom to the King also.<sup>137</sup>

14. *In 1384 parliament again opened by Chancellor Pole. Its statute and other proceedings. In December was the end of the session; and the end of John Wickliffe's life.*

The second parliament in 1384 was in 8 Ric. II, in November.<sup>138</sup> It was on the Tuesday to which it was adjourned, that "before the King and Lords sitting, and the Knights and burgesses standing, Sir *Michael de la Poole*, Knight, Chancellor of England," stated the causes of the parliament and what "ways would greatly further and speed this consultation."<sup>139</sup>

Although one of those ways was "*to abandon all maintaining and partaking*," yet there were the following proceedings:

*Walter Sibell* of London was arrested, and brought into the Parliament before the Lords at the suit of *Robert de Vere*, earl of *Oxford*, for slandering him to the Duke of Lancaster, and other nobles, *for maintenance*. The same *Walter* denied not but that he said that certain there named recovered against him the said *Walter*, and that *by maintenance of the said Earl*, as he thought. The said *Earl*, being present, affirmed himself innocent thereof, and to be tried. *Walter* thereupon was committed to prison, and the next day, humbly submitting himself, he desired the Lords to be a mean for him, saying that he could not accuse him: whereupon the Lords convicted him to the damage of 500 marks to the said *Earl*: for the which and for his fine and ransom, he was committed to prison."<sup>140</sup>

"*Alice*, wife of Sir *William Windsor*, Knight, desired to have the judgment and order made against her in the time of King E. III,<sup>141</sup> and the judgment and statute made against her in the first year of this King,<sup>142</sup> to be repealed, and that she may be restored to all her lands and tenements whatsoever."

*Res.* "The King repealeth those orders, judgments and statutes, so

<sup>137</sup> Cotton's Abr., pp. 299, 300; Rot. Parl. iii, 168-170, is cited in Foss's Biogr. Jurid.

<sup>138</sup> As to the particular day there may be a comparison of 2 Stat. of the Realm, p. 36, with Cotton's Abr., p. 303.

<sup>139</sup> "First, to be early in the House; the second, to repel all melancholy passions; the third, to begin at most needful

matters, and then to direct without any mixture of orders; and fourthly, to abandon all maintaining and partaking." *Id.*, p. 303, No. 5.

<sup>140</sup> Cotton's Abr., p. 304, No. 12.

<sup>141</sup> As to *Alice Perrers* see ch. 19, § 54, p. 628.

<sup>142</sup> As to which see § 1, ante, p. 641.

as all gifts, grants and feoffments of any the lands, tenements or houses repealed may remain in force."<sup>143</sup>

Among "the petitions of the Commons" with the answers is this:

28. "That such clerks of either of the benches, that shall refuse to bring into the courts the rolls, *whereby attorneys may have free search*, shall be imprisoned for one whole year, and fine with the King."

*Resp.* "Who findeth himself grieved may *complain to the Chancellor* and shall find remedy."<sup>144</sup>

This parliament (in 1384) sat from Nov. 12 to Dec. 24.<sup>145</sup> Its statute<sup>146</sup> contains the chapters mentioned below.<sup>147</sup>

The end of this session of parliament, and the end of John Wickliffe's life were in the same month.<sup>148</sup> Cunningham says:

"He was a second time attacked with palsy, in December 1384, while attending divine service with his people at Lutterwerth, and after an illness of three days, he expired. He was buried in the chancel of the church where his ashes reposed till the hand of violence disturbed their peace."<sup>149</sup>

<sup>143</sup> Cotton's Abr., p. 304, No. 13; 4 Lingard's Engl., ch. 3, pp. 198, 199, *note*: citing Rot. Parl. iii, 40, 186, 327.

<sup>144</sup> Cotton's Abr., p. 306, No. 28.

<sup>145</sup> 2 Stubbs's Const. Hist., ch. 16, p. 466, *note* i.

<sup>146</sup> 2 Stat. of the Realm, pp. 36, 37.

<sup>147</sup> i. As to liberties of the church, charters and statutes. ii. "That no man of law shall be from henceforth justice of assize or of the common deliverance of jails in his own country, and that the chief justice of the Common Bench be assigned amongst other to take such assizes and deliver jails, but, as to the chief justice of the King's Bench, it shall be as for the most part of an hundred years last past was wont to be done." The marginal statements of the other chapters are—iii. "The Statute 20 Edw. III, ch. 1, 2, recited; no judge shall take any gift but of the king, nor give counsel where the king is party," &c. iv. "Penalty on judge or clerk making a false entry," &c. v. "Pleas at common

law shall not be discussed before the constable and marshal."

Chapters iv and v are retained in 1 Statutes Revised, edi. 1870, pp. 234, 235.

<sup>148</sup> Watkins's Biogr. Dict., edi. 1822; citing *Life by Lewis*; 1 Fuller's Worthies, edi. 1840, *note* on p. 479.

<sup>149</sup> 1 Lives of Eminent Englishmen, Glasgow edi. 1838, p. 424. "This shocking violation took place in consequence of a decree of the council of Constance in 1415, when, after the condemnation of 45 articles relative to his doctrines, the reformer himself was pronounced to have died an obstinate heretic, and his bones were ordered to be dug up, that they might be separated from the ashes of the faithful, and cast upon a dunghill. Accordingly they were disinterred, burnt, and thrown into the Swift, a streamlet which runs by Lutterworth." *Id.* The disgrace was not on Wickliffe, but on those who made and executed the decree.



15. In 1385, when Chancellor Pole was made Earl of Suffolk, two of the King's uncles were made dukes, and the Earl of March was recognized as heir presumptive to the crown. After a grant to the Chancellor of lands of the previous earl of Suffolk there was a bold retort by Thomas de Arundel, bishop of Ely. Parliament opened in October by the Chancellor. Its statute and other proceedings; Walter de Skirlawe's part.

"On the 6th of August, 1385, Thomas of Woodstock was made duke of Gloucester, Edmund of Langley, duke of York, and Michael de la Pole, earl of Suffolk; and the young earl of March was recognized as heir presumptive to the crown."<sup>150</sup>

The death of the Princess of Wales (the King's mother) "seems to have given the signal for the outbreak of political quarrels which had, perhaps, been temporarily healed by her influence whilst she lived."<sup>151</sup>

"The King's weakness and extravagance had excited great discontent among all classes, and a general cry was raised against the favourites who surrounded him, to whose mismanagement and waste the distress of the people was, probably with some justice, attributed. The honours and more substantial favours which were extravagantly distributed did not tend to allay the public discontent."<sup>152</sup>

To support the title of Earl of Suffolk, Michael de la Pole had a munificent grant of lands of the last Earl, whose family had become extinct. The jealousy with which such favour was regarded is evidenced by the bold retort given to this new-made earl by Thomas de Arundel (or Fitz-Alan),<sup>153</sup> bishop of Ely.

<sup>150</sup> Stubbs's Const. Hist., ch. 16, pp. 467, 468.

<sup>151</sup> *Id.*, p. 467; 4 Lingard's Engl. ch. 3, p. 198. From it may be inferred that her death was in July (1385.) *Id.*, p. 200.

<sup>152</sup> Foss's Biogr. Jurid.

<sup>153</sup> The latter was his family name; but he took the name of Arundel from his birthplace, or his father's title. He was third son of Richard, Earl of Arundel and Eleanor; his second wife, who was fifth daughter of Henry Plantagenet, third earl of Lancaster, and widow of

John Lord Beaumont. Born about 1352, and educated for the priesthood, Thomas soon had benefit from his noble connections. He was made archdeacon of Taunton in 1373, and bishop of Ely in 1374, before he was of canonical age for either preferment. "Attached to the party of the Duke of Gloucester, he assisted that prince in rectifying the misgovernment of King Richard, and opposing" his "unworthy favorites." Foss's Biogr. Jurid.

"On his application to the Chancellor, *Michael de la Pole*, Earl of Suffolk, for the restoration of the temporalities to the Bishop of Norwich,<sup>154</sup> the proud Earl rebuked him, saying, 'What is it, my Lord, that you now ask of the King? Seems it to you a small matter for him to part with the temporalities when they yield to his coffers £1,000 a year? Little need has the King of such counsellor to his loss.' Whereupon Bishop Arundel thus roundly retorted: 'What is it that you say, my Lord Michael? Know that I desire not of the King that which is his own; but *that* which, by the counsel of you and such as you, he unjustly detains from other men, and which will never do him any good. If the King's loss weigh with you, why did you greedily accept 1,000 marks *per annum* when you were made an earl?'"<sup>155</sup>

"*Michael de la Pole*, Earl of Suffolk and Chancellor of England, in the presence of the Kings, Lords and Commons pronounced the cause of the Parliament" at Westminster in 9 Ric. II (1385).<sup>156</sup>

In this parliament it was enacted as subjoined.<sup>157</sup>

*Walter Skirlawe* (mentioned in § 11, p. 661), who held the post of keeper of the Privy Seal till he was elected bishop of Lichfield and Coventry, in 1385, was selected to announce to this parliament the creation of the King's uncles, Edmund and Thomas, to the dukedoms of York and Gloucester, and of *Michael de la Pole* to the earldom of Suffolk.<sup>158</sup> In the proceedings of parliament the con-

<sup>154</sup> Mentioned in § 12, p. 664.

<sup>155</sup> Foss's Biogr. Jurid.

<sup>156</sup> This Parliament of 1385 was called for "the Friday next after the Feast of St. Luke," and was adjourned until the next day, and then till the Monday next. Cotton's Abr., p. 308. The day of St. Luke, the Evangelist, being October 18, it would seem that the Monday next after the Friday for which the parliament was called, must have been somewhat later in October than the 20th. The parliament is, however, mentioned as sitting from Octo. 20 to Dec. 6. 2 Stubbs's Const. Hist., ch. 16, p. 468, note 3.

<sup>157</sup> The marginal statement of the chapters is—i. "Statutes confirmed, except Stat. 8, Ric. II, c. 3." ii. "Villains flying and suing their lords shall not bar

thereby." iii. "Attaint or writ of error for reversioner on false verdict or erroneous judgment against particular tenant; in case of covin by the particular tenant, the reversioner shall recover the land; the tenant's remedy to traverse the covin; the statute extended to two judgments previously given in the King's Bench." iv. "The power of removing a prior shall be tried by the ordinary." v. "Fees of priests arrested." 2 Stat. of the Realm, pp. 38, 39.

<sup>158</sup> The Parliament Roll, in describing the ceremony, calls *Walter de Skirlawe* 'doctor egregius, eloquens et discretus.' (Rot. Parl. iii, 205-9.) He had held the bishopric of Lichfield and Coventry for a year only, when he was removed to that of Bath and Wells, in Aug., 1386, where he remained less than two years, being

firmation is stated in their cases, and also in that of *Robert de Vere*, earl of Oxford, created Marquis of Dublin.<sup>159</sup>

16. *By whom the Great Seal was held in 1386, in the Spring when the Chancellor was absent; in October he opened parliament. Soon he was succeeded by Thomas de Arundel, and was impeached; against him a judgment which is questionable. Robert de Plesington succeeded as Chief Baron by John Cary. Of the statute commissioning certain lords to act with the new Chancellor, Treasurer and Privy Seal.*

During the Chancellor's temporary absence, from Feb. 9, to March 28, 1386, the Great Seal was held by three clerks; one of whom was *Richard de Ravenser* (mentioned in ch. 19, § 57, pp. 635, 636).<sup>160</sup>

As to *Jeffrey* (or Geoffrey) *Chaucer*, that terse and elegant poet (the Homer of his age),<sup>161</sup> Mr. Green seems to be mistaken when he says in one volume<sup>162</sup> "that he sat in the Parliament of 1386," and in another<sup>163</sup> that he was therein "a member of the Commons." Chaucer's name is not in the list of members of the parliament of 1386";<sup>164</sup> neither is it in the list of members at the preceding session (9 Ric. II),<sup>165</sup> nor in that at the subsequent session (11 Ric. II).<sup>166</sup>

As to the parliament at Westminster the first of October, in 10 Ric. II (1386), there are early writers.<sup>167</sup> On that day, in the

translated to the richer see of Durham, in April, 1388. After presiding over this see for seventeen years, he died March 24, 1405, and was buried in his cathedral. He is described as 'a pious and humble prelate, whose name is transmitted to posterity' 'by his works of charity and munificence.' Foss's Biogr. Jurid.

<sup>159</sup> Cotton's Abr., p. 310, No. 14 to 317.

<sup>160</sup> "He died at the end of May, 1386, 9 Ric. II, and was buried in Lincoln cathedral. His will is printed in the 'Proceedings of the Archæological Institute at Lincoln,' (1848,) pp. 312-17." Foss's Biogr. Jurid.

<sup>161</sup> 3 Fuller's Worthies, pp. 20, 21, of edi. 1840.

<sup>162</sup> Short Hist., ch. 5, § 1, p. 237.

<sup>163</sup> Green's Hist. of Engl. Peop., book

4, ch. 4, vol. 1, edi. 1879, p. 504.

<sup>164</sup> Cotton's Abr., edi. 1657, pp. 313, 314.

<sup>165</sup> *Id.*, pp. 307, 308.

<sup>166</sup> *Id.*, p. 320.

<sup>167</sup> "An historical narration of the manner and form of that memorable parliament which wrought wonders; began at Westminster in the tenth year of the reign of King Richard, the Second. Related and published by Thomas Fantant, clerk. Printed in the year 1641." Reprinted in 1 Harl. Miscel., p. 133 to 150, edi. 1810.

"The bloody parliament in the reign of an unhappy Prince." Printed in 1643. Reprinted in 5 Harl. Miscel., p. 323 to 327. Knighton, p. 2680-2683, is cited in 2 Hume's Engl., ch. 17,

presence of the King, Lords and Commons, "Sir *Michael de la Poole*, earl of Suffolk, Chancellor of England," stated as the principal cause of the parliament, the King's purpose to pass with an army beyond the seas.<sup>163</sup> Not many days elapsed before there was strong expression of dissatisfaction with the King's ministers, and especially with the Chancellor.<sup>169</sup> Mr. Stubbs says:

"The King retired after the opening of parliament to Eltham, perhaps in anticipation of the attack; on the 13th of October the patent was sealed by which *Robert de Vere* was made duke of Ireland: and immediately the storm arose. Both houses signified to the King that the Chancellor and the Treasurer, the bishop of Durham, should be removed from their posts."<sup>170</sup>—"On the 24th of October the two ministers were removed; bishop *Arundel* became Chancellor, and the bishop of Hereford, *John Gilbert*, treasurer; and the earl of Suffolk was formally impeached by the Commons. The charges against him were minute and definite."<sup>171</sup>

The articles are deemed by Mr. Hume frivolous;<sup>172</sup> by Mr. Hallam not so weighty as the clamour of the Commons might have led us to expect."<sup>173</sup> Suffolk defended himself; and a statement of his services and merits was made by his brother-in-law, *Richard le Scrope*, one of the King's permanent counsellors. The defence was able; every point charged was either denied or explained. Yet the Commons insisted that he had broken his oath; and the judgment given by the Lords was to this effect:

"That since the said earl had not alleged in his answer that he had observed his oath when he swore 'that he would not know of or suffer any damage or disherison of the King; nor that the right of his crown should any ways be destroyed if he could hinder it,' with the rest of the clause in the said oath";—yet that he, being the minister of the King, and knowing his estate and the necessity of the

p. 290, of N. Y. edi. 1850, and note L, at the end (p. 523) of same vol. The same contemporary historian (Knighton) is cited in Hall. Mid. Ages, ch. 8, part 3, p. 68 of Engl. edi.; p. 111, of Phila. edi. 1824; and in 4 Lingard's Engl., ch. 3, p. 206.

<sup>168</sup> Cotton's Abr., p. 214.

<sup>169</sup> Foss's Biogr. Jurid.

<sup>170</sup> 2 Stubbs's Const. Hist., ch. 16,

p. 473.

<sup>171</sup> Six articles are mentioned in Cotton's Abr., p. 315; seven in 4 Lingard's Engl., ch. 3, pp. 206, 207, 1 St. Tr. 91 to 94, and 2 Stubbs's Const. Hist., pp. 474, 475.

<sup>172</sup> 2 Hume's Engl., ch. 17, pp. 290, 291.

<sup>173</sup> Hall. Mid. Ages, ch. 8, part 3, pp. 114, 115, of vol. 2, Phila. edi. 1824.

realm, had taken such lands and tenements as are laid in the said impeachment and are recited in the first article, and though he hath alleged in his answer that the gifts so bestowed upon him were confirmed in full parliament, yet since he hath produced no such record enrolled in parliament,<sup>174</sup> therefore it was adjudged" as stated below.<sup>175</sup>

One whose well considered opinion is entitled to great weight, deems it "quite clear that in his administrative capacity he was equitably entitled to acquittal."<sup>176</sup>

*Robert de Plesyngton* (mentioned in § 2, p. 641) ceased to be Chief Baron of the Exchequer on Nov. 5, 1386.<sup>177</sup> Then *John Cary*<sup>178</sup> became his successor.

<sup>174</sup> 1 State Tr. 91 to 94. The confirmation was so recent as 9 Ric. II, and one would suppose might have been remembered by the lords, and seen in a record which they had a right to inspect. Dr. Lingard states that "it is entered" in the rolls "exactly in the same words as the grant to Gloucester himself, to which no objection was made." 4 Lingard's Engl., ch. 3, p. 207, note; citing Rot. Parl. iii, 209. Reference may also be made to Cotton's Abr., p. 310, No. 16.

<sup>175</sup> "That all manors, lands, tenements, and their appurtenances, so received by him from the king, should be seized and taken into his hands, to have and to hold them to him and his heirs as fully as ever they had been before the gift so made of them to the said earl, with the issues and mesne profits of the same from the time of the said grant, and which were to be levied out of the rest of the said earl's lands elsewhere; yet that it was not the intention of the king, nor of the lords, that this judgment so given should make him lose the title of earl, nor yet the 20 marks yearly, which he was to receive out of the issues and profits of the county of Suffolk by reason of the said title." There was also judgment against the earl on other articles, and 'he was soon after cast into the castle of Windsor.' State

Tr., p. 91 to 94.

<sup>176</sup> 2 Stubbs's Const. Hist., ch. 16, p. 475.

<sup>177</sup> During the sitting of the parliament, which impeached the chancellor, *Michael de la Pole*, Earl of Suffolk, and which passed the statute or ordinance constituting commissioners for regulating the government, Mr. Foss supposes that Plesyngton's removal, which was a fortnight before the date of the ordinance, was the act of the king himself, and that "it not improbably arose from a desire to thwart and counteract his uncle Thomas, Duke of Gloucester, to whose party Plesyngton was strongly attached." Biogr. Jurid.

<sup>178</sup> Of an ancient and opulent family seated in Devonshire. He was son of Sir John Cary, knight, bailiff of Selwood forest, and Jane, daughter of Sir Guy de Brien; and soon after his father's death, in 1371, was appointed a captain of the Devonshire coast, and a commissioner of array in the same county. There is no proof of his ever having acted as an advocate. He was, indeed, called by the king's writ to take upon himself the degree of a serjeant-at-law in 6 Ric. II; but he disobeyed the summons (*Manning* 201); and it may be that he refused the honour because he was not a regular pleader in the courts. *Id.*

The parliament sat from Octo: 1, to Nov. 20;<sup>179</sup> and made a statute as subjoined.<sup>180</sup> In a commission issued Nov. 19, and embodied in the statute, eleven lords were named.<sup>181</sup> Immediately before the adjournment was the following:

"The King in full parliament, by his own mouth, maketh open protestation that for anything which was done in the same parliament, he would not turn it to the prejudice of him or of his crown but that the prerogative of him and his crown might be saved."<sup>182</sup>

Yet under the Great Seal is the mandate dated the first day of December, in 10 Ric. II.<sup>183</sup>

*17. How, in 1386, Chancellor Arundel and the Commissioners moved one way; and the King under the counsel of his late Chancellor and others went another way. Of the document prepared in 1387 by Tresilian, C. J., and sealed by Bealknap, C. J., and by Judges Fulthorpe, Holt, Burgh and Serjeant Lokton against the new statute and its commission. Steps taken against the late Chancellor and against others who encouraged action in conflict with that of parliament.*

Now the King and his present chancellor moved in opposite ways:

<sup>179</sup> Cotton's Abr., p. 318, No. 35; 1 State Tr. 95; 3 Stubbs's Const. Hist., ch. 16, p. 472, note 1. Before its adjournment Chancellor Arundel issued Nov. 8 (10 Ric. II) a "writ for removing after judgment the record of a suit in the King's Bench against a clerk of chancery, into the chancery." Appendix, p. 1027, of Mr. Sanders's Collection of "Orders of the Court of Chancery and Statutes of the Realm relating to Chancery," published at London in 1845.

<sup>180</sup> The marginal statements are as follows: "Recital of public evils required to be redressed;" "recital of the commission granted by the king by assent of the parliament to certain prelates, lords, &c., to be of his continual council for one year; their power to survey the estate of the king's house and of his realm; to enquire into his revenues of all sorts and all grants, and the expenditure

thereof, and all defaults and offences whereby the king is injured or the law disturbed; to enter all courts, &c., and to amend all defaults and misprisions; to hear and determine complaints not amendable at law; majority empowered to decide; all persons shall obey the commissioners; none shall advise the king to repeal their power; penalty first offence, forfeiture of goods and imprisonment; second offence, judgment of life and limb." 2 Stat. of the Realm, p. 39 to 43.

<sup>181</sup> 1 State Tr., 94, 95. Bishop's Courtenay, Neville, Wykeham and Brantingham, the abbot of Waltham, the dukes of Gloucester and York, the earl of Arundel, and the lords John of Cobham, Richard le Scrope and John Devereux. These were to act in conjunction with the new Chancellor, Treasurer, and Privy Seal. 2 Stubbs's Const. Hist.,

the chancellor and the commissioners proceeded, without regarding the King's protestation (mentioned in the latter part of the preceding section); while the King released from Windsor castle his late chancellor, the earl of Suffolk, and listened to dangerous counsel from him and from *Robert de Vere*, duke of Ireland, *Alexander Neville*, archbishop of York, *Robert Tresilian*, Chief Justice of the King's Bench and Sir *Nicholas Brambre*, an alderman of London. In August, 1387, a document was prepared by Chief Justice *Tresilian*, containing a series of questions and answers, the purport of which was to declare the 'new statute, ordinance and commission to be derogatory to the royalty and prerogative of the King'; and that the persons concerned in procuring and making it were traitors. The document seems to have been in the form of an act of council at Nottingham August 25, and sealed by the judges present,<sup>184</sup> who (besides *Tresilian*) were *Robert de Beaknap*, Chief Justice of the Common Pleas,<sup>185</sup> *John Cary*, the Chief Baron mentioned in § 16, p. 673, *Roger de Fulthorpe* (mentioned in § 2, p. 643), *John Holt*<sup>186</sup> Sir *William Burgh*<sup>187</sup>

ch. 16, p. 476, note 2; citing Rot. Parl. iii, 221, and Knighton, c. 2685, 2686. The Privy Seal was *John Waltham*.

<sup>182</sup> Mr. Stubbs thinks "it must have been the threat of compulsion, or the advice of really dangerous counsellors that had prevented him from accepting the commission." *Id.*, p. 487.

<sup>183</sup> 2 Stat. of the Realm, p. 39 to 43.

<sup>184</sup> 2 Stubbs's Const. Hist., ch. 16, pp. 477, 478. Foss's Biogr. Jurid.

<sup>185</sup> It is said "Beaknap refused for sometime to sign the document, but the duke and earl threatening his life if he persisted, he at last submitted, exclaiming as he did so: 'Now here lacketh nothing but a rope, that I may receive a reward worthie for my desert; and I know if I had not doone this I might not have escaped your hands; so that for your pleasures and the king's I have doone it, and deserved thereby death at the hands of the lords.'" (Holinshed i, 782.) Foss's Biogr. Jurid.

<sup>186</sup> Born in Northamptonshire, where he had considerable property. Alb. Rot., Orig. ii, 240.) He appears in the Year Books from 40 Edw. III; in the last year of whose reign he was made a king's serjeant. His elevation to the Common Pleas was in 7 Ric. II (1383). Foss's Biogr. Jurid.

<sup>187</sup> "Apparently of a Norfolk family, although he had property in the counties of Leicester, Rutland and Lincoln. His first appearance, as an advocate in the Year Books, was in 43 Edw. III (1369); and he is mentioned as one of the king's serjeants in 3 Ric. III (1379), (Rot. Parl. iii, 79,) receiving in the same year the appointment of seneschal of the domain of Okeham '*ad placitum regis*.' (Cal. Rot. Parl., 203, 208, 231.) In Trinity 1383, 7 Rich. II, we find him acting as a judge of the Common Pleas, to which he had probably been only just appointed, as in the following Christmas he was knighted at Eltham, having pre-

(or Burleigh), Justices of that Bench, and *John de Lokton*,<sup>188</sup> a serjeant.<sup>189</sup>

"On the 10th of November Richard returned to London";—on the 12th "Gloucester, Warwick and Arundel were reported to be approaching in full force. The Archbishop of Canterbury and Lords Cobham, Lovel and Devereaux appeared as negotiators; the council, they declared, was innocent of any attempt to injure the King; the five false advisers, Neville, Vere, de la Pole, Tresilian and Brember were the real traitors, and against these, on the 14th, Gloucester and his friends laid a deliberate charge of treason."—"In Westminster Hall, on the 17th," the King "received the Lords of the council, graciously, accepted their excuses and promised that in the next parliament his unfortunate advisers should be compelled to appear and give account of themselves."<sup>190</sup>

Orders were issued "for the apprehending and seizing all suspected folks and for keeping them in safe custody till the parliament should assemble."<sup>191</sup> There was "taken Sir Nicholas Brambre," and "he found surety for his forthcoming; but the duke of Ireland, archbishop of York, earl of Suffolk and Robert Tresilian were nowhere to be found."<sup>192</sup>

viously received the materials for his robes as a banneret. (Dugdale's Orig., 46, 103.) Foss's Biogr. Jurid.

<sup>188</sup> Derived his name from the township of Lokton, in Yorkshire, where he had property at Malton, in its neighborhood. He was probably son of Thomas de Lokton, and Beatrice, his wife, who purchased half of the manor of Canewyk, in Lincolnshire, in 24 Edw. III, and sold it in the same year. (Abb. Rot., Orig. ii, 213, 215.) He is mentioned as a king's serjeant in 7 Ric. II, 1384, assisting at the trial of John Cavendish for defaming the chancellor, Michael de la Pole. (Rot. Parl. iii, 196.) *Id.*

<sup>189</sup> As no other of the king's serjeants was then present, he was no doubt summoned in consequence of his being designed as the successor of David Hanne-mere, the judge of the King's Bench, then recently deceased, since his appointment took place two months afterwards, on

October 25." *Id.*

<sup>190</sup> 2 Stubbs's Const. Hist., ch. 16, p. 478.

<sup>191</sup> "Accordingly divers officers of the household were expelled their office, and, together with several others, apprehended and committed to prison, viz: Sir Simon Burleigh, Sir William Elman, Sir John Beauchamp, Sir Thos. Trivet, Sir John Salisbury, and divers others." 1 State Tr., 99.

<sup>192</sup> *Id.* The late chancellor, after sailing to Calais, proceeded to Paris; Archbishop Neville also escaped to the continent; and De Vere, Duke of Ireland, made his way to France after he had raised a force and been defeated in Oxfordshire. 2 Stubbs's Const. Hist., ch. 16, pp. 478, 479. The place at which he fought was Radcot bridge (distant from Faringdon 3 and from London 71 miles). About ten years afterwards (1397) was a conversation (mentioned in § 29, *post.*)



On the day, or very shortly before the day, for parliament to meet, there were arrests of the following judges: Sir Roger Fulthorp, Sir Robert Belknap, Sir John Carey, Sir John Holt, Sir William Burleigh, and John Locton, the King's serjeant at law.<sup>198</sup>

18. *Parliament in February 11 Ric. II (1387-8) opened by Chancellor Arundel. Articles of impeachment against the late Chancellor and others. The Lords declare that the cause cannot be tried but in parliament, nor by any law except that of parliament. Proceedings of this parliament support its title of 'parliamentum sine misericordia.'*

In the Great Hall at Westminster, on the third<sup>194</sup> day of February, 1387-8, the Lord Chancellor Arundel declared the cause of the summons to parliament.

The "five appellants, arising, declared their appellation by the mouth of Robert Pleasington,<sup>195</sup> their speaker";—"To whom the Lord Chancellor, by the King's commandment, answered." And "the duke of Gloucester, with his four companions, upon their knees, humbly gave thanks to the King for his gracious opinion of their fidelity."<sup>196</sup>

"The lords spiritual and temporal there present then claimed as their liberty and franchises, that all great matters moved in that parliament, and to be moved in other parliaments in time to come, touching the peers of the land, should be discussed and *judged by the course of parliament, and not by the civil law or by the common law* of the land, used in the inferior courts of the kingdom; which claim, liberty and franchise the King allowed and granted in full parliament."<sup>197</sup>

Then the appellants delivered in writing thirty-nine articles against Alexander Neville, Robert de Vere, Michael de la Pole, Robert Tre-

whereof Hereford's account begins thus: "*Norf.* We are on the point of being undone.' *Heref.* Why so? *Norf.* On account of the affair of Radcot bridge." 4 Lingard's Engl., ch. 3, p. 248, note.

<sup>193</sup> 1 State Tr., 99.

<sup>194</sup> Parliament was summoned, not for '*Purificatio B. V. Mariæ*' or Candlemas Day, which is February 2, but for "*the Monday after the purification of*

our Lady. Cotton's Abr., p. 321, No. 1. It may be inferred *that* Monday was Feb. 3. 1 State Tr., 99. The parliament sat "Feb. 3 to March 20, and April 11 to June 4." 2 Stubbs's Const. Hist., ch. 16, p. 479, note 4.

<sup>195</sup> He died in 17 Ric. II (1393-4.)

<sup>196</sup> *Id.*; Cotton's Abr., p. 321, No. 6.

<sup>197</sup> *Id.*, p. 321, No. 7; 1 State Tr., 102.

silian and Nicholas de Brambre.<sup>198</sup> Time was given the lords to examine the articles until the 13th of February.

"During this interval, the Justices, Serjeants and other sages of the law, both of the realm and law civil, were charged by the King to give their faithful advice to the lords of parliament how they ought to proceed in the above said appeal. Then the said Justices, Serjeants and sages of both laws having taken these matters into their deliberation, answered the said lords of parliament, that they had seen and well understood the tenor of the said appeal, and affirmed that it was not made nor brought according as the one law or other required. Upon which the said lords of parliament having taken deliberation and advice, it was by the assent of the king, with their common accord, declared that in so high a crime as is laid in this appeal, and which touches the person of the king, and the estates of this realm, and is perpetrated by persons who are peers thereof, together with others, the cause cannot be tried elsewhere but in parliament, nor by any other law or court except that of parliament; and that *it belongs to the Lords of Parliament*, and to their free choice and liberty, by antient custom of parliament, *to be judges in such cases* and to judge of them by the assent of the king; and thus it shall be done in this case by award of parliament, because *the realm of England is not nor ever was (neither is it the intent of the king and lords of Parliament that it shall ever be) ruled and governed by the civil law.*"<sup>199</sup>

"And it was the judgment of the lords of parliament, by assent of the king, that this appeal was well and duly brought, and the process upon the same was good and effectual according to the laws and course of parliament, and by which they will award and judge it."<sup>200</sup>

On the 13th of February, default of the archbishop, duke and

<sup>198</sup> 1 State Tr., p. 101 to 112; "some counts being common to all; some peculiar to individuals." 2 Stubbs's Const. Hist., p. 479.

<sup>199</sup> "And, therefore, it is not their intent otherwise to proceed in so high a case as this appeal, which cannot be tried or determined any where else than in parliament since the process or order used in inferior courts is only as they are entrusted with the execution of the ancient laws and customs of the realm, and the ordinances and establishments of parliament." 1 State Tr., 113.

<sup>200</sup> 1 State Tr., 113; 2 Stubbs's Const. Hist., ch. 16, pp. 480, 481; citing Rot. Parl. iii, 276. *After which* the Lord

Chancellor, in the name of the clergy, in open parliament made an oration 'that they could not by any means be present at proceeding where any censure of death is to be passed;' and the clergy delivered in a protestation: they declared "that neither in respect of any favour, nor for fear of any man's hate, nor in hope of any reward, they did desire to absent themselves; but only that they were bound by the canon not to be present at any man's arraignment or condemnation." 1 State Tr., 114; Cotton's Abr., p. 322, No. 9, 10; 2 Inst., pp. 586, 587; 2 Stubbs's Const. Hist., ch. 16, pp. 480, 481.

earl and Robert Tresilian having been recorded, the lords proceeded to judgment. They designated divers of the articles as charging treason; and "*upon due information of their consciences*, they pronounced the said archbishop, duke and earl with Robert Tresilian to be *notoriously* guilty of each of the said articles that concerned them"; and the said lords of parliament, "as judges in parliament in this case, by assent of the king, pronounced their sentence."<sup>201</sup>

During Nicholas Brambre's trial, Tresilian was captured and hanged, Feb. 19; on the next day (Feb. 20) sentence was pronounced against Brambre, and it was immediately executed.<sup>202</sup>

Robert Belknap, John Holt, Roger Fulthorpe, William Burleigh, John Carey and John Lockton being impeached (March 2) and called to answer for their conspiracy at Nottingham, were heard, and judgment was pronounced against them; but upon intercession their lives were spared; they were sent back to the tower as prisoners, and afterwards were sent to Ireland, there to remain for life.<sup>203</sup>

On the 3d (of March) John Blake and Thomas Uske, impeached

<sup>201</sup> 1 State Tr., 114; 2 Stubbs, p. 481. The Archbishop (Alexander Neville) became a parish priest at Lovain, and there continued till his death. 1 State Tr., 98, note g. Fuller says: "He died in the fifth year of his exile, and was buried there in the convent of the Carmelites." 1 Fuller's Worthies, p. 481, of ed. 1840. The Duke (Robert de Vere) after getting to Holland went to Lovain, where, in 1393, he was slain in hunting a wild boar. 1 State Tr., p. 98, note h.

The late chancellor, Michael de la Pole, Earl of Suffolk, did not long survive this sentence; he died on the 5th of September, 1389. By his wife Catherine, daughter and heir of Sir John Wingfield, he left four sons. Michael, the eldest, was restored to his father's lands and honours; and his descendants were successively created marquis of Suffolk, earl of Pembroke, duke of Suffolk, and earl of Lincoln; but all these honours became extinct in 1513. Foss's Biogr.

Jurid.

<sup>202</sup> 1 State Tr., p. 113 to 119; 2 Stubbs's Const. Hist., ch. 16, p. 481. Tresilian's body was buried in the church of the Grey Friars. Foss's Biogr. Jurid.

<sup>203</sup> They were distributed thus: Robert Belknap and John Holt, in the village of Dromore; Roger Fulthorpe and Wm. Burleigh, in the city of Dublin; John Cary and John Lockton, in Waterford. They were not to go out of town above two miles, with the exception of Fulthorpe, who might go three. A yearly annuity was given to each during life, to-wit: To Belknap, Fulthorpe and Burleigh of £40 each; to Cary and Lockton of £20 each; and to Holt of 20 marks. 1 State Tr., 120, note. Under an act of January, 1397, *Robert de Bealknap, John Holt and William Burleigh* (or Burgh) returned to England; Fulthorpe, Cary and Lockton had probably died in Ireland before that time. Foss's Biogr. Jurid.

for aiding and advising in the treasons, were heard; and on the next day the lords pronounced them guilty; and sentence of death was executed the same day."<sup>204</sup>

On the 6th there was a hearing of Thomas, bishop of Chichester, and afterwards of Simon de Burleigh, John de Beauchamp, James Baroverse and John Salisbury. The lords adjourned until the 20th of March, on which day the whole parliament was adjourned until the 13th of April, on which day the lords further adjourned till the 5th of May. Then sentence was pronounced under which the bishop (being the king's confessor) was banished to Cork in Ireland; John Salisbury was drawn from Tower-Hill to Tyburn and there hanged; and the other three were beheaded on Tower-Hill.<sup>205</sup>

This parliament made the statute whereof the marginal statements are subjoined.<sup>206</sup> It has been spoken of as '*Parliamentum sine mis-*

<sup>204</sup> 1 State Tr., pp. 120, 121.

<sup>205</sup> *Id.*, p. 121 to 123.

<sup>206</sup> "Petition 1. Causes of the Statute and commission, 10 Ric. II; evil conduct of the Archbishop of York, and others; conspiracy against the executing the said commission; opposition to such conspiracy by the Duke of Gloucester, &c.; appeal of treason against the conspirators; forcible resistance by the conspirators; opposition to them; attainder of them in parliament; prayer of the petition; to affirm the proceedings of the said parliament 10 Ric. II; and also all subsequent proceedings; and also to indemnify the appellants and their adherents; enactment accordingly; pardon to the appellants of all acts done against the appellees."

"Petition 2. For the indemnity of all persons not attainted, and certain persons named; for the indemnity of adherents to the persons attainted; grant of the petition."

"Petition 3. To confirm all appeals, &c., in this parliament, although the prelates were absent; proviso that this affirmance, &c., be no precedent, par-

ticularly in cases of treason."

"Petition 4. That none of the attainted living be pardoned; attempt to restore them declared treason; grant of the last two petitions."

ii. "The King shall have all the forfeitures of parties attainted in this parliament: fraudulent conveyances by any such parties declared void."

iii. "Forfeiture of the estates of the Bishop of Chichester, and others."

iv. "Penalty on concealing estates of attainted persons, except trust estates."

v. "Rights of Lords of Franchises, and issues in tail, &c., and jointures of women also excepted."

vi. "None shall petition for grants of such forfeited estates during the war, except for offices and church benefices," &c.

vii. "Recital of Statute 9 Edw. III, Stat. 1, c. 1; recital of Statute 25 Edw. III, Stat. 3, c. 2; the Statutes recited shall be executed in all points, notwithstanding any charter," &c.

viii. "Certain annuities granted by the Crown made void."

ix. "New charges on wools, &c., an-

*ericordia.*<sup>207</sup>

"Its acts fully establish its right to the title, and stamp with infamy the men who, whether their political aims were or were not salutary to the constitution, disgraced the cause by excessive and vindictive cruelty."<sup>208</sup>

19. In 1388, appointments of Chief Justices of the King's Bench and Common Pleas; of Chief Baron of the Exchequer; and of three puisne judges of the Common Pleas. Lord Chancellor Arundel made Archbishop of York. Parliament at Cambridge in September. Its statute. The second chapter, that no "officers shall be appointed for gifts," &c, considered "worthy to be written in letters of gold, but more worthy to be put in due execution."

In 1387-8, within a few days before the meeting of the parliament, wherein Sir Robert Tresilian, Chief Justice of the King's Bench, Robert de Bealknap, Chief Justice of the Common Pleas, and John Cary, Chief Baron of the Exchequer, were impeached, appointments were made (Jan. 31) of *Walter de Clopton*<sup>209</sup> to succeed Tresilian, and (Jan. 30) of *Robert de Charleton*<sup>210</sup> to succeed Bealknap. *Thomas Pynchebek*<sup>211</sup> was made Chief Baron April 24, 1388.<sup>212</sup>

*Richard Sydenham*<sup>213</sup> and *John Wadham*<sup>214</sup> became justices of the

nullified.<sup>215</sup>

x. "Delays of law by privy seal forbidden."

xi. "Recital of Statute 6 Ric. II, chapter 5; Chancellor and Justices may settle the places for holding the assizes."

All of these chapters are in 2 Stat. of the Realm, p. 43, *et seq.* Chapter x is retained in 1 Statutes Revised, ed. 1870, p. 235, *et seq.*

<sup>207</sup> Knighton, c. 2701, is cited in 2 Stubbs's Const. Hist., ch. 16, p. 482, note 2.

<sup>208</sup> *Id.*, p. 482.

<sup>209</sup> Descended from a family established originally at Newenham, in the parish of Ashdon, in Essex, but which afterwards removed into Suffolk. Walter was son of Sir William de Clopton, a commissioner of array in that county;

appears in the Year Books as an advocate in 40 Edw. III, and was one of the king's sergeants from 1 Ric. II. Foss's Biogr. Jurid.

<sup>210</sup> In 1388 he received the order of knighthood as a banneret; fines levied before him extend to midsummer, 1394; soon after which he probably died. Some of his decisions are in Richard Bellewe's reports. *Id.*

<sup>211</sup> Whose family derived its name from a parish in Lincolnshire. *Id.*

<sup>212</sup> He probably died in or before May, 1389. *Id.*

<sup>213</sup> Of Somerset county, where his father, Roger de Sydenham, was possessed of Combe, in Monksilver parish. (Cal. Inq. p. m. ii, 306.) He was educated as a lawyer. Foss's Biogr. Jurid.

<sup>214</sup> His family took its name from the

Common Pleas, probably in 11 Ric. II, when the court was almost cleared by impeachment of all the judges except Sir William de Skipwith.<sup>215</sup>

<sup>215</sup> In the same year, 11 Ric. II (1388), *William Thirning*<sup>216</sup> was, on April 11th, appointed a judge of the same court.<sup>217</sup>

Chancellor Arundel was nominated to succeed Alexander Neville as archbishop. April 3 (1388) is mentioned as the date of the pope's bull for Arundel's translation from Ely to York.<sup>218</sup>

Parliament was held in 1388 Sept. 9 to Octo. 17.<sup>219</sup> The King's mandate<sup>220</sup> states that at a parliament holden in 12 Ric. II, "the morrow after the nativity of our Lady,"<sup>221</sup> was made the statute whereof marginal statements are as subjoined.<sup>222</sup> The second chapter, that "no officers shall be appointed for gifts," &c., is as follows:

place of its residence in Knowston parish, near South Molton, in Devonshire. He was son of Sir John Wadham, knight; was educated as a lawyer; is among the advocates in R. Bellewe's Reports, and was eventually among the king's serjeants. *Id.*

<sup>215</sup> The fines levied before Sydenham extend to the Octaves of Trinity, 1396, 19 Ric. II, which is thought to have been the period of his death. His son, Simon, became bishop of Chichester. One of the descendants of Henry, the eldest, received, in 1641, a patent of baronetcy, which became extinct in 1739. *Id.*

The fines levied before Wadham commence in 12 Ric. II (1388), and continue till 1397. (Dugdale's Orig., 46.) He probably then retired, though he lived till 1411. (Cal. Inq., p. m. iii, 338.) It is said of him, 'that being free of speech, he mingled it well with discretion, so that he never touched any man, how mean soever, out of order, either for sport or spight; but with alacrity of spirit, and soundness of understanding, managed all his proceeding.'

His descendant, Nicholas, with his wife, Dorethy, daughter of Sir William Petre, Secretary of State to Queen Elizabeth, founded the college at Oxford, which bears his name. (Collins's Peerage vii, 273.) *Id.*

<sup>216</sup> Of a family probably settled at Thirning, in Huntingdonshire. He first appears in the Year Books in 44 Edw. III (1370). Foss's Biogr. Jurid.

<sup>217</sup> *Id.*

<sup>218</sup> (Rymer vii, 574.) Foss's Biogr. Jurid.

<sup>219</sup> Mr. Stubbs says at *Cambridge*, 2 Const. Hist., ch. 16, p. 482, and note 2. The King's mandate mentions the parliament as holden in *Canterbury*. 2 Stat. of the Realm, p. 55 to 60.

<sup>220</sup> Of 'the twentieth day of November.' *Id.*

<sup>221</sup> September 8 is mentioned in Catholic books as '*Natalis B. Virginis Mariæ*.'

<sup>222</sup> i. "Liberties of the church, the charters and statutes confirmed."

ii. "No officers shall be appointed for gifts," &c.

iii. "Statutes respecting artificers, ser-

"That the chancellor, treasurer, keeper of the privy seal, steward of the king's house, the king's chamberlain, clerk of the rolls, the justices of the one bench and of the other, barons of the exchequer, and all other that shall be called to ordain, name or make justices of peace, sheriffs, escheators, customs, comptrollers or any other officer or minister of the king, shall be firmly sworn that they shall not ordain, name or make, justice of the peace, sheriff, escheater, customer, comptroller nor other officer or minister of the king for any gift or brocage, favour or affection; nor that none which pursueth by him or other, privily or openly, to be in any manner office, shall be put in the same office or in any other; but that they make all such officers and ministers of the best and most lawful men, and sufficient to their estimation and knowledge."

Whereof Lord *Coke* says: "A law worthy to be written in LETTERS OF GOLD, but more worthy to be put in due execution. For certainly never shall justice be duly administered but when the officers and ministers of justice be of such quality, and come to their places in such manner as by this law is required."<sup>223</sup>

20. *What happened May 3, 1389, when Richard was told his age. The Great Seal surrendered by Thomas Arundel; next day delivered to William of Wykeham. Of his wisdom; appointments of barons and judges; and composition of the council.*

In their accounts of what occurred on the third of May, 1389, his-

vants, &c., confirmed; servants going from their service shall carry letters testimonial; seal; if wandering without such letters they shall be put into the stocks; exceptions; penalty for forging such letters, or receiving servants without them; artificers compelled to serve in harvest."

iv. "High price of labour; wages of servants in husbandry; penalty on giving or taking higher wages."

v. "Persons having served in husbandry till twelve shall continue to do so."

vi. "Servants shall use only bows and arrows, and leave idle games."

vii. "Punishment of wandering beggars; maintenance of impotent beggars; pilgrims shall carry testimonials."

viii. "Travelling beggars shall carry testimonials."

ix. "How these statutes shall be put

in execution."

x. "Six justices of peace in each county; quarterly sessions, &c.; wages of justices and their clerk; no steward, &c., shall be assigned; judges, &c., need not attend the sessions regularly."

xi. "St. Westm. I, 3 Ed. I, c. 34; 2 Ric. II, St. I, c. 5; reporters of lies against peers, &c., shall be punished by the council."

xii. "Expenses of knights of parliament shall be levied on all lands originally liable."

xiii. "Nuisances in and about cities and towns shall be removed by officers," &c.

xiv. "Statute 47 Edw. III, ch. I, for cloths confirmed."

xv. "Provisors of benefices beyond sea declared out of the king's protection," &c.

xvi. "The staple at Calais."

torians do not vary materially.<sup>224</sup> Dr. Lingard's account<sup>225</sup> is very like that of Mr. Green:

"Entering the council," Richard "suddenly asked his uncle how old he was. 'Your Highness,' answered Gloucester, 'is in your twenty-second year.' 'Then I am old enough to manage my own affairs,' said Richard coolly. 'I have been longer under your guardianship than any ward in my realm. I thank you for your past services, my lords, but I need them no longer.'"<sup>226</sup>

Mr. Stubbs says:

"Following up his brave words by action, he demanded the Great Seal from Arundel, who at once surrendered it; Bishop Gilbert resigned the treasury, and on the following day *William of Wykeham* and Thomas Brantingham returned to the posts of chancellor and treasurer."<sup>227</sup>

Of *William of Wykeham*, Mr. Foss says:

"His influence with both the Lords and the Commons is apparent by their frequent recurrence to him in points of difficulty, availing themselves of his wisdom and experience, and giving to his advice that weight and authority which, in such times, could have been only secured by the complete reliance they had on his honesty and prudence. Although avoiding as much as possible any unnecessary interference in state affairs, such was his reputation that in the subsequent contests occasioned by the extravagance and weakness of the King, the bishop was always one of the persons appointed by the popular party to check the royal prerogative and control the government expenditure. Yet no proof can be stronger that, in the exercise of those duties, his conduct was tempered with mildness and moderation, than the fact that when King Richard, claiming the rights of his majority, took the government into his own hands and discharged the officers who had been imposed upon him, he compelled the bishop, much against his inclination, to accept the office of chancellor; and he accordingly received the Great Seal for a second time on May 4, 1389."<sup>228</sup>

<sup>223</sup> Co. Lit., 234 a. The SECOND, tenth, eleventh and fifteenth chapters are in 1 'Statutes Revised,' ed. 1870, p. 236 to 239.

<sup>224</sup> 4 Collyer's Engl., p. 188; 2 Hume's Engl., ch. 17, p. 296, of N. Y. ed. 1850.

<sup>225</sup> 4 Lingard's Engl., ch. 3, p. 222.

<sup>226</sup> Green's Short Hist., ch. 5, § 5, p. 275; Hist. of Engl. Peop., book 3, ch. 4, pp. 500, 501, of vol. 1.

<sup>227</sup> 2 Stubbs's Const. Hist., ch. 16, p. 483. "Some minor changes were made in the legal body, and the appellant lords were removed from the council. The success of this bold stroke was as strange as its suddenness. According to the chronicler, it was welcomed with general satisfaction." *Id.*; citing Knighton, c. 2736.

<sup>228</sup> Foss's Biogr. Jurid.



"His first step was to quiet the apprehensions which naturally arose in the people's minds on the hazardous course the King had taken." <sup>229</sup>

As part of the Lincolnshire property of Sir John de Bello Monte, who died in 20 Ric. II, is stated to have come from 'the *heirs* of Thomas de Pynchbek' it appeared to Mr. Foss probable that Pynchbek's death occasioned a change in the office of chief baron of the Exchequer. John Cassy was appointed his successor May 12, 1389. <sup>230</sup> On the same day *William Doubridge* (or Dounebrigge) was appointed a baron. <sup>231</sup>

On the 20th of the same month, *John Hill* (or Hull) <sup>232</sup> and *Hugh Huls* (or Holes) <sup>233</sup> were appointed judges of the King's Bench. <sup>234</sup>

On the same day *William Rickhill* <sup>235</sup> was constituted a judge of the Common Pleas. <sup>236</sup>

In September a negotiation was set on foot for admission to the King's favour of Gloucester and his co-appellants. Mr. Stubbs states that "a violent dispute took place in the council on the 15th of October; Richard apparently wishing to buy over the Earl of Nottingham with a large pension given him as warden of Berwick, and the chancellor objecting to the expense"; and that "in the following November John of Gaunt returned home, and by a prompt use of

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> He previously held the office of auditor of the Exchequer, in which he was paid 6s. 8d. a day for going to Lostwithiel to audit the accounts of Cornwall and Devon. It is thought probable that he died in 17 Ric. II. *Id.*

<sup>232</sup> Born at Hill's court, the seat of the family, near Exeter. The first mention of him as a lawyer is a writ of summons dated Nov. 26, 1382, to take upon himself the degree of a serjeant at law, being the earliest of that description which has been found, the previous entries only noticing those who were king's serjeants. *Id.*

<sup>233</sup> Stated to be the grandson of Sir William of the Hulse, in Cheshire, by

that knight's second son, David. He is mentioned in Bellewe's reports. *Id.*

<sup>234</sup> In this reign Hugh Huls acted for several years as *locum tenens* for the justice of North Wales. *Id.*

<sup>235</sup> Described by Sir Edward Coke as a native of Ireland, and by Hasted as establishing him in Kent county, and becoming possessed of the manor of Ridley there. In 1384 (7 Ric. II) he is mentioned as one of the king's serjeants. *Id.*

<sup>236</sup> *Id.* He was in office till the end of the reign; in 22 Ric. II, he took at Calais the examination of Thomas, Duke of Gloucester, as to the commission in anno 10, and other matters. (Cotton's Abr., pp. 378, 393, 394; 2 Inst., 51.

his personal influence produced an apparent reconciliation among all parties."<sup>237</sup>—"The composition of the council was not" now "one-sided; Arundel, Nottingham, Derby and the Duke of Gloucester himself were restored to their places in it before December, 1389."<sup>238</sup> Mr. Foss observes that Wykeham "obtained a confirmation of all the pardons granted for the late disturbances and a suspension of the pressing subsidies that had been imposed."<sup>239</sup>

21. *On what day of January Parliament was holden in 13 Ric. II (1389-90). Discourse by Chancellor Wykeham. He and other officers surrendered their offices and were discharged. Next day their official conduct was approved; and they were recharged with the offices. Proceedings in chancery, and complaint of oppressions. Statutes 1st, 2d and 3d. In Nov., 14 Ric. II (1390) parliament opened with an eloquent discourse from Chancellor Wykeham. Its statute. John Penros removed (in Jan. 1391) from the Irish to the English bench.*

Parliament was holden at Westminster in 13 Ric. II, in January (1389-90).<sup>240</sup>

"William de Wickham, bishop of Winchester and Chancellor of England, by the King's commandment, declared before him and the whole estates, how the King, now being come to more full age, meant the better to see his people governed, and that as well the Clergy as the Temporalitie should enjoy all their liberties."

"On the *twentieth*<sup>241</sup> day of January, the fourth day of the Parliament, the Bishop of Winchester being Chancellor, and the Bishop of St. David's being Treasurer, with all the Lords of the Great Council, except the Clarke of the Privy Seal, prayed, the King to be discharged of their said offices and to have others therein placed. At which time the Chancellor gave up to the King the Great Seal, and

<sup>237</sup> 2 Stubbs's Const. Hist., ch. 16, p. 483; citing Proceedings of Privy Council i, pp. 11, 12, and Walsingham.

<sup>238</sup> *Id.* (2 Stubbs), p. 486; citing Privy Council Proceedings i, 17.

<sup>239</sup> Biogr. Jurid.

<sup>240</sup> Mr. Stubbs supposes this parliament sat "in 1390, Jan. 7, March 2." 2 Const. Hist., ch. 16, p. 484, note 1. That it was holden "the Monday next after the feast of St. Hilary," is stated in 2 Stat. of the Realm 60, and in Cotton's Abr.,

p. 329. Yet on the last mentioned page, that Monday is mentioned as 'being the *eleventh* day of January.' It could not have been so early in the month as either the *seventh* or the *eleventh*, if the fourteenth was the day of St. Hilary. But it may have been, and probably was, as late as the *seventeenth*, which would make "the twentieth day of January the fourth day of the parliament," as stated in Cotton's Abr., p. 329, No. 6.

<sup>241</sup> See last note.

the Treasurer the Keys of the Exchequer, the which the King received and them discharged, together with the Lords of the Great Council; who, being discharged, required openly in the Parliament that every person would complain of anything unduly done by them. The Commons required respite of answer until the next day. At which time they, with the Lords, upon demand, affirmed all to be well done."

"Whereupon the King recharged those officers by delivering the Great Seal to the said Bishop of Winchester, and the Keys of the Treasury to the said Bishop of St. David's, and received those to be his councillors which were before, with his uncles, the Dukes of Lancaster and Gloucester; with protestation for any act then done, he would, at his pleasure, take or refuse his councillors aforesaid; all of which said officers and councillors were then sworn in Parliament faithfully to counsel the King."<sup>242</sup>

"The "petitions of the Commons with their answers," embrace the following:

No. 30. "That neither the Chancellor or other Chancellor do make any order against the Common Law; nor that any judgment be given without due process of law."

*Resp.* "The usage heretofore shall stand, so as the King's royalty be saved."

33. "That no person do appear upon any writ of *quibusdam certis de causis*, before the Chancellor or any other the council, where recovery is thereof given by the Common Law."

*Resp.* "The King willeth, as his progenitors have done; saving his regality."<sup>243</sup>

<sup>242</sup> Cotton's Abr., p. 329; 1 Campbell's Lives of the Chancellors, pp. 296, 297, of 2d ed. (1846), pp. 280, 281, of Boston edii. 1874. In Cotton's Abr., on pages 330, 331, in Nos. 8 to 17, are proceedings of a judicial nature, or enactments as to such proceedings. No. 18, p. 331, is as follows: "For that certain annuities were assigned to be paid to certain justices, banished into Ireland in the 11th year of the king, without certain limitation how the same should be paid; it was enacted that the wives, or other friends of the said justices so remaining in Ireland, should have to farm all the lands of the said justices, being not sold, to the value of such annuity, notwithstanding any

patent made unto others, which, if it will not suffice, then certain of the council shall take order therein."

On p. 332, Nos. 21 and 22 are as to the king by assent of parliament, creating "his uncle of Lancaster Duke of Aquitaine;" and No. 23 is as to the king by like assent, making "Edward, the eldest son of the Duke of York, Earl of Rutland."

<sup>243</sup> Cotton's Abr., p. 333. These petitions (in Nos. 30 and 33) are mentioned in 4 Inst., 82, and remarked on in 1 Spence's Eq., 344; citing 'Summary by Sir H. Seton, 21, 23, 24.' They seem also to be referred to in Legal Judic. in Ch., ed. 1727, p. 14, and pp. 32, 33.

45. "That every man may complain of the oppressions of what person or estate soever, without the incurring the pain of the statute made at Gloucester in the second year of the King."

*Resp.* "Every man may complain according to the law."<sup>244</sup>

Of statute the first,<sup>245</sup> in 13 Ric II (1389-90), the marginal abstracts are as subjoined.<sup>246</sup>

<sup>244</sup> Cotton's Abr., p. 335.

<sup>245</sup> 2 Stat. of the Realm, p. 61 to 68.

<sup>246</sup> i. "The Statute 25 Edw. III, Stat. 6, c. 3, confirmed; the King's presentee shall not be admitted to any benefice full of an incumbent till the King hath recovered by law; incumbent removed shall sue within a year." ii. "Jurisdiction of the constable and marshal;" of whose contracts the constable hath cognizance; declarations thereof; prohibition to the constable and marshal." iii. "Limits of steward's and marshal's jurisdiction." iv. "Duty of the clerk of the market of the king's house as to weights, &c.; penalty for misconduct." v. "Jurisdiction of the admiral and his deputy." vi. "Number of serjeants at arms thirty; penalty on them for extortion, fine and ransom." vii. "Statute 12 Ric. II, c. 10, recited. Who shall be justices of the peace; their oath." viii. "Statute of 12 Ric. II confirmed, except as to justices of peace; justices in sessions shall assess rate of artificers' and labourers' wages, and also gains of victuallers; defaults in assize of bread, and ale shall be punished corporally; statute 23 Edw. III, c. 6, confirmed; assize of horse bread, hay and oats." ix. "One measure and one weight throughout the realm, except in Lancashire; wood shall be sold 14 lb. the stone; refuse of wools; wool shall not be bought by good packing, and shall be coheted only in the owner's name." x. "Cogware and Kendal cloth may be made of their usual length and breadth." xi. "Inconveniences from exporting deceitful cloth; cloths of certain counties shall not be put to sale, tacked and

folded; the makers shall put their marks to cloths." xii. "No shoemaker shall be a tanner, nor any tanner a shoemaker." xiii. "Penalty on laymen not having 40s., and clergy £10 a year, keeping dogs, &c., to hunt; one year's imprisonment on enquiry by justices of the peace." xiv. "Bonds to the King in the Exchequer shall not be of the double." xv. "Castles and jails united to their counties." xvi. "Protection *quia profecturus* when allowable; protections *quia moraturus* as before; repeal of all such protections when the parties return, &c." xvii. "In suits against particular tenants, the reversioner may be received to defend his right; extended to suits now depending: reversioner shall find surety of the issues of the lands in demand." xviii. "Proceedings against the mayor and bailiffs of Lincoln upon the petition of the bishop, &c., thereof; inconveniences of partial trials of suits in Lincoln by people of the city; on false verdict before the mayor and bailiffs of Lincoln, attainr may be brought and tried by a jury of the county at large." xix. St. Westm. 1, 13 E. I, c. 47, as to taking of salmon confirmed; no devices shall be practiced to destroy the fry of fish; what time of the year the rivers in Lancashire shall be in defence; conservation of this statute and their authority." xx. "At what ports persons going beyond sea shall embark." The King's mandate for reading and proclaiming this statute is dated 'the sixteenth day of May.'

The first, second, fifth and seventh chapters are retained in 1 'Statutes Revised,' edi. 1870, p. 239 to 242.

"In March 1390, the King agreed to a body of rules for the management of the council business."<sup>247</sup>

A mandate of 'the fifteenth day of May' (1390), recites 'Statute the second.'<sup>248</sup> The marginal abstracts of its first chapter are sub-joined.<sup>249</sup> The residue of 'statute the second' is mentioned by Mr. Stubbs as "the statute of Provisors passed in 1390, which reenacted the statutes of 1351 and 1362 with additional safe-guards against Roman usurpation."<sup>250</sup>

What is called 'Statute the third' is an ordinance dated 'the twelfth day of May.'<sup>251</sup> Upon it there are observations by Mr. Stubbs.<sup>252</sup>

In the parliament at Westminster in 14 Ric. II (1390), on Nov. 12,<sup>253</sup> "A long and eloquent discourse of government of the King," was made by "the Bishop of Winchester, being Chancellor," Nov. 12.<sup>254</sup>

"The Lords and Commons prayed the King that the Prerogative of him and his Crown might be kept, and that all things done or attempted to the contrary might be redressed, and that the King might be as free as any his progenitors were: whereunto the King granted."<sup>255</sup>

Of the statute made in 14 Ric. II,<sup>256</sup> marginal abstracts are sub-

<sup>247</sup> 2 Stubbs's Const. Hist., ch. 16, p. 486. "Which show" (says Mr. Stubbs) "that it must have been the threat of compulsion, or the advice of really dangerous counsellors, that had prevented him from accepting the commission of 1386." *Id.*

<sup>248</sup> 1 Stat. of the Realm, p. 68 to 74; 1 Revised Statutes, ed. 1870, p. 242 to 253.

<sup>249</sup> "No pardon for murder, treason, rape, &c., shall be allowed unless the offence shall be specified; names of suitors for pardons shall be endorsed on the bill by the chamberlain; the bill shall be sent to the keeper of the Privy Seal, without whose warrant it shall not

pass; the fine of those at whose suit such pardons are obtained."

<sup>250</sup> 2 Stubbs's Const. Hist., ch. 16, p. 485.

<sup>251</sup> 2 Stat. of the Realm, pp. 74, 75.

<sup>252</sup> 2 Stubbs's Const. Hist., ch. 16, p. 485.

<sup>253</sup> November 11 is the day of "St. Martin, bishop and confessor." Parliament was called for "*the day after St. Martin.*" Cotton's Abr., p. 337. It sat from Nov. 12 to Dec. 3. *Id.*, p. 337, and p. 340; 2 Stubbs's Const. Hist., ch. 16, p. 484, note 1.

<sup>254</sup> Cotton's Abr., p. 338.

<sup>255</sup> *Id.*, No. 15.

<sup>256</sup> 2 Stat. of the Realm, pp. 76, 77.

joined.<sup>257</sup> By ch. 11 "the number of justices of the peace was enlarged from six to eight in each shire."<sup>258</sup>

*John Penros*<sup>259</sup> was early in 1391 (Jan. 15) removed to the English bench.<sup>260</sup>

22. *Character of William of Wykeham. In 1391, Sept. 27, the Great Seal resigned by him and entrusted again to Thomas de Arundel. Parliament opened by him in November. Its statute. Observations upon St. 7 Edw. I, 'de religiosis.' Viewed as an efficient limitation on the greed of acquisition. How attempts to frustrate its intention by means of uses and trusts are regarded.*

More than ordinary diligence has been exercised in seeking out what can illustrate the history of *William of Wykeham*. Mr. Foss says:

"The results exhibit an active mind never unoccupied; an energy subdued by no difficulties; foresight in the contrivance; caution in the development, and an union of judgment and taste, in the execution of his works; an absence of all arrogance throughout his rapid advance in clerical honours; and that discreet exercise of political power which enabled him to hold the first place in the royal counsels, without incurring the jealousy of the people. Few men have lived whose career has displayed such continued exertions for the public good, and none have left so many examples of practical wisdom and well-applied munificence."

In 1391 he finally gave up the Great Seal on September 27.

<sup>257</sup> i. "The staple removed from Calais into England, as under 27 Edw. III, Stat. 2, c. 1; aliens shall buy English goods to the value of half their imports." ii. "On all exchanges by aliens English goods shall be bought." iii. "Officers of the staple shall be sworn." iv. "Of whom denizens shall buy wools, which shall not be regrated." v. "Denizens shall not export wools," &c. vi. "English merchants shall freight none but English ships." vii. "Export of tin." viii. "Rhenish wines need not be gauged." ix. "Merchant strangers protected." x. "Customers, &c., shall not own nor freight ships, and shall hold heir office during pleasure." xi. "Eight

justices of peace in each county; their estreats; their wages; seal for servants; the Statutes 12 Ric. II, 13 Ric. II, st. 1, c. 7, and other statutes confirmed." xii. "Value of Scottish money," &c. Chapter eleven is retained in 1 'Statutes Revised,' pp. 253, 254, of ed. 1870.

<sup>258</sup> 2 Stubbs's Const. Hist., ch. 16, p. 485.

<sup>259</sup> Of a Cornish family; raised to the office of a *judge* of the King's Bench in Ireland, Feb. 27, 1385 (8 Ric. II). Foss's Biogr. Jurid.

<sup>260</sup> In the next year he was made justice of South Wales; he was a trier of petitions in the parliament of 17 Ric. II. *Id.*

In this reign, "during the two years and a half that he retained the Great Seal, he had the happiness to restore the public tranquillity so effectually that the parliament thanked the king for his good government."<sup>261</sup>

Upon Wykeham's resignation of the Great Seal, it was again entrusted to *Thomas de Arundel*;<sup>262</sup> who, as stated in § 19, p. 682, had become Archbishop of York.

"The Archbishop of York, Primate and Chancellor of England," declared the causes of the Parliament at Westminster in 15 Ric. II, Nov. (1391).<sup>263</sup>

Of the statute of 15 Ric. II (1391)<sup>264</sup> marginal statements are subjoined.<sup>265</sup> Upon chapter 5 Mr. Stubbs has made observations in his

<sup>261</sup> "He never appeared prominently in any subsequent political transaction of the reign. He seems to have been still treated with respect by the king, although the party with whom he had acted incurred the royal vengeance; but as a payment for this escape from the reaction by which his friends were sacrificed, a loan of £1,000 was extorted from him, which he was not in a condition safely to refuse." Foss's Biogr. Jurid.

<sup>262</sup> "On each of his appointments as chancellor he received a patent from the king, stating that as he has no domains or villas pertaining to his bishopric near London, where his people, family and horses can be entertained while he is in the office of chancellor, the king assigns to him for his livery, by virtue of his office, the villas and parishes of Hakeney and Leyton on the first occasion, and Stebenhyth on the second, so that his people, &c., may be entertained therein liberally and without impediment. (Rymer vii, 553-708.) There is a curious instance of the application of the word 'uncle,' in a letter to him from Henry of Lancaster, Earl of Derby (afterwards Henry IV), who addresses him as 'his very dear and very entirely well-beloved

uncle.' (Proceedings in Chancery temp. Eliz. I, 7.) The actual relationship between them was this: Henry's mother, Blanch, the wife of John of Gaunt, was the granddaughter of the archbishop's grandfather through his mother's elder brother, and was consequently the archbishop's grandfather through his mother's elder brother, and was consequently the archbishop's first cousin. It thus appears that it was the custom in that age for children to designate the first cousins of their parents as uncles and aunts; a practice which is still prevalent in Wales." Foss's Biogr. Jurid.

<sup>263</sup> The day of All Souls is Nov. 2. The parliament was called for 'the next day after All Souls.' It sat in 1391 from Nov. 3 to Dec. 2. 2 Stubbs's Const. Hist., ch. 16, p. 484, note 1.

<sup>264</sup> 2 Stat. of the Realm, p. 78 to 82.

<sup>265</sup> i. "Former statutes confirmed." ii. "Statutes concerning forcible entries and riots confirmed." iii. "Jurisdiction of the admiral." iv. "Eight bushels of corn strided make the quarter; penalty on buying after any other rate; forfeiture of the corn." v. St. 7 Edw. I, de Religiosis; converting land to a churchyard declared to be within that statute; mortmain where any is seized of land to

second<sup>266</sup> as well as in his third volume.

Speaking of the mortmain act, and of "the series of provisions in which the statute '*de religiosis*' was prefigured, from the Great Charter downwards," Mr. Stubbs says:

"To forbid the acquisition of lands by the clergy without the consent of the overlord of whom the lands were held, was a necessary measure, and one to which a patriotic ecclesiastic like *Langton* would have had no objection to urge. But the spirit of the clergy had very much changed between 1215 and 1279, and the statute '*de religiosis*,' which was not so much an act of parliament as a royal ordinance, was issued at a moment when there was much irritation of feeling between the king and the archbishop. It was an *efficient limitation on the greed of acquisition*, and although very temperately administered by the kings, who never withheld their license for the endowment of any valuable new foundation, it was viewed with great dislike by the popes, who constantly urged its repeal. and by the monks, whose *attempts to frustrate the intention of the law, by the invention of trusts and uses*, are regarded by the lawyers as an important contribution to the land-law of the middle ages."<sup>267</sup>

23. *In the parliament of 16 Ric. II (1392-3), protestation by the ex-chancellor William de Courtney, archbishop of Canterbury. Statute whereof ch. 5 is of præmunire. Who temporarily held the Great Seal in the spring of 1393. In October Ralph de Selby made a baron.*

At Winchester in 16 Ric. II, in January 1392-3,<sup>268</sup> on the day to

the use of spiritual persons; mortmain to purchase lands to gilds, fraternities, offices, commonalties; or to their use. vi. "On appropriation of benefices, provision shall be made for the poor and the vicar." vii. Stat. 7 Ric. II, c. 16, recited; armour, coin or victuals allowed to be carried to Berwick; customs on export thereof," &c. viii. St. 14 Ric. II, c. 7, as to the export of tin repealed." ix. "Statute of the Staple 27 Edw. III, st. cap. 9 recited and confirmed." x. "None shall buy clothes of Guildford until they are fulfilled," &c. xi. Girdlers freed from restraint of certain patents." xii. "None shall be com-

pelled to answer in private courts for matters determinable by the law of the land."

The second, third, fifth and sixth chapters are retained in 1 '*Statutes Revised*,' edi. 1870, p. 255 to 259.

<sup>266</sup> 2 Stubbs's Const. Hist., ch. 16, pp. 485, 486.

<sup>267</sup> 3 *Id.*, ch. 19, pp. 332, 333.

<sup>268</sup> The parliament called for the 'Utaves of St. Hilary' was from 'Monday,' which was, the Utaves of St. Hilary' adjourned until the next day. 1 Cott. Abr. 346. Mr. Stubbs states that it sat from Jan. 20 to Feb. 10. 2 Const. Hist., ch. 16, p. 484, note 1.



which Parliament was adjourned, the Archbishop of Canterbury,<sup>269</sup> by the King's appointment, declared the cause of the Parliament.<sup>270</sup>

No. 20. "*William*, Archbishop of *Cant*, maketh his protestation in open parliament, saying that the Pope ought not to excommunicate any bishop or intermeddle for or touching any presentation to any ecclesiastical dignity recovered in any the King's courts. He further protested that the Pope ought to make no translations to any bishopric within the realm against the King's will: for that the same was the destruction of the realm and crown of England, which hath always been so free as the same hath had none earthly sovereign but only subject to God in all things touching regalities, and to none other; the which his protestation he prayed might be entered."<sup>271</sup>

In the statute of 16 Ric. II<sup>272</sup> the fifth chapter is the statute of *præmunire*, which "imposed forfeitures of goods as the penalty for obtaining bulls or other instruments at Rome,"<sup>273</sup> and "in which the word *præmunire* is used to denote the process" whereby "the law is enforced";<sup>274</sup> it is regarded as one of the strongest defensive measures

<sup>269</sup> William de Courtney, who as stated in § 9, p. 656, resigned the Great Seal Nov. 30, 1381.

<sup>270</sup> 1 Cott. Abr., 346.

<sup>271</sup> *Id.*, p. 348, No. 20.

<sup>272</sup> 2 Stat. of the Realm, p. 82 to 87. In the margin is the following as to the chapters: i. "Recital of 9 Edw. III, st. 1, ch. 1, that merchants may freely buy and sell; and of Stat. 25 Edw. III, st. 3, ch. 2, confirming 9 Edw. III, and enacting that merchants may sell their wares in gross or by retail; statute 11 Ric. II, c. 7, confirming former statutes." "No merchant, stranger, shall retail any merchandizes but victuals; no spicery shall be exported." ii. "The Statute 15 Ric. II, ch. 12, confirmed; penalty on offenders £20." iii. "Weights and measures shall be according to the standard in the Exchequer, and be preserved, &c., by the clerk of the market," &c. iv. "For the restraining liveries of company." v. "Recital that the remedy to recover presentations to benefices is in the king's court, and that the execu-

tion thereof is by the bishop; that the pope had awarded processes and sentences of excommunication against certain bishops for executing judgments given in the king's court, and proposed to translate prelates out of the realm, or from one living to another; the danger therefrom to the freedom of the crown of England; the promise of the commons to assist the king in defence of the liberties of his crown; the like promise of the Lords Temporal; the promise of the Lords Spiritual present, and of the proctors of the Lords Spiritual absent: *Præmunire* for purchasing translations, bulls, or any other instruments from Rome or elsewhere." vi. "The Statute 13 Ric. II, st. ch. 1 recited; so much thereof as relates to the terms of charters of pardon confirmed; so much as relates to the passing of pardons, and to persons soliciting them, repealed."

<sup>273</sup> 2 Stubbs's Const. Hist., ch. 16, p. 486.

<sup>274</sup> *Id.*, p. 330; 1 Stat. Revised, ed. 1870, p. 259 to 264.

taken during the middle ages against Rome."<sup>275</sup>

In 1393, *Richard de Ravenser's* brother *John*<sup>276</sup> was, on March 26, appointed with the Master of the Rolls to hold the Great Seal till April 19.<sup>277</sup>

*Ralph de Selby*<sup>278</sup> is in a patent of Octo. 24, 1393 (17 Ric. II) appointing him to the office of baron of the Exchequer, described with the addition 'magister'; shewing that persons in orders were still appointed to that office.<sup>279</sup>

24. *In parliament of 17 Ric. II (1393-4) language uttered as to the King's uncle (the Duke of Lancaster) by the chancellor's brother, the earl of Arundel, for which the earl had to ask pardon. Legislation of this year. Particularly of the chancellor's power when writs are grounded upon untrue suggestions. Final decree upon petition of Windsor v. Lindsey. Pardon of Judges banished to Ireland. Also of parliament in 18 Ric. II.*

At Westminster in 17 Ric. II, January 1393-4, Parliament was, on the day to which it was adjourned,<sup>280</sup> opened by "the Archbishop of

<sup>275</sup> *Id.* Of the legislation comprised in the statutes of præmunire and provisors, Mr. Stubbs observes, that "in the hands of Henry VIII it became a lever for the overthrow of papal supremacy; it furnishes in ecclesiastical history the clue of the events that connect the Constitutions of Clarendon with the Reformation." *Id.*, pp. 331, 332.

<sup>276</sup> He and his brother *Richard* (mentioned in ch. 19, § 55, and in this chapter, § 16,) were natives of Ravenser, the place in the neighbourhood of Kingston-upon-Hull, where William de la Pole was born; and to the influence of this powerful merchant probably owed their advance. Both were ecclesiastics: John, in 48 Edw. III, granted an endowment to a charity at 'Hellewe,' in connection with the church of Waltham. He was keeper of the Hanaper in 1386 (10 Ric. II). Foss's Biogr. Jurid.

<sup>277</sup> The death of Richard was about

two months after March 28, 1386; that of John was probably in the latter part of 1393, or early in 1394. *Id.*

<sup>278</sup> May have been the *Ralph de Selby* 'in utroque jure Doctor', who was made master of King's College, Cambridge, in 14 Ric. II. *Id.*

<sup>279</sup> *Id.* He was of the king's council in 21 Ric. II, but soon after died or retired. *Id.*

<sup>280</sup> On Tuesday, the Quindene of St. Hilary, the parliament was adjourned until the next day, at which day it was opened. "On Thursday after, the Commons presented to the king in full parliament Sir John Bussey for their Commons speaker." Cotton's Abr., p. 345. The parliament "ended on Wednesday, the 6th of March." *Id.*, p. 356, No. 54. Mr. Stubbs supposes that it sat from Jan. 27 to March 6. 2 Const. Hist., ch. 16, p. 484, note 1.

Yorke, Chancellor of England.”<sup>281</sup> His brother Richard, earl of Arundel, had quarrelled with the duke of Lancaster.

That earl “declared to the King, in the presence of certain Lords, that he had certain conceptions to utter touching the King’s honour. First, that he thought it not honorable for the King to suffer the Duke of Lancaster to go arm-in-arm with him. Secondly, that it besemed not the Duke’s men to wear the same colour of livery that the King’s did. Thirdly, that the Duke in place of Council and Parliament spake such bitter words as the said Earl and such like durst not frankly to utter their minds. Fourthly, it was much against the King’s profit to give to the said Duke the Duchy of Guienne. Fifthly, touching the great mass of money given to the Duke for his voyage into Spain, and touching the peace by him lately taken.”

Unto all which, after the King had answered and justified it to be good, it was awarded by the King, by the assent of all the Lords, that the said Earl in full parliament, should say to the said Duke these words following, viz:

‘Sir, sith that it seemeth to the King, and other Lords and eke that each here hath been so mickle grieved and displeased by my words, It forethinketh, and I beseech you of your grace and Lordship to quite me your man tallant.’

The which the said Earl, in the presence of the King and Lords, did speak.”<sup>282</sup>

“The legislation of 1394 is chiefly mercantile, and most of the other statutes contain provisions for improving or confirming the laws which had been made in the time of Edward III for the benefit of trade.”<sup>283</sup>

Yet some other notice of the statute of 17 Ric. II<sup>284</sup> may be proper. After chapters of which marginal statements are subjoined<sup>285</sup> is the following:

VI. “Forasmuch as people be compelled to come before the King’s counsel, or in the chancery by writs grounded upon untrue sugges-

<sup>281</sup> Cotton’s Abr., p. 351.

<sup>282</sup> *Id.*, p. 352; 2 Stubbs’s Const. Hist., ch. 16, p. 489. Arundel was sent to the Tower August 3, but liberated on the 10th. *Id.*, p. 490, note 1.

<sup>283</sup> 2 Stubbs’s Const. Hist., ch. 16, p. 486.

<sup>284</sup> 2 Stat. of the Realm, p. 87, *et seq.*

<sup>285</sup> i. “9 Edw. III, Stat. 2, ch. 3, against melting money recited; extended to groats and half-groats; no foreign

coin shall be current in England, nor exchange made of English money for Scottish.” ii. “Cloths may be made of any length and breadth; no cloth shall be sold until measured, &c., by the Aulneger; deceit in making cloth forbidden.” iii. “Bolts of single worsted may be exported.” iv. “Malt sold for London shall be cleansed from dust.” v. “Certain officers of the revenue shall not hold their offices for life or years.

tions, "that the chancellor, for the time being, presently after that such suggestions be duly found and proved untrue, shall have power to ordain and award damages according to his discretion, to him which is so troubled unduly, as afore is said."<sup>286</sup>

Opposite other chapters of 17 Ric. II, are the statements below.<sup>287</sup>

No. 10. "*John de Windsor* complaineth and requireth to be restored to the manors of Rampton, Cottenham and Westwick, with their appurtenances, in the county of Cambridge, the which were adjudged to him by the King's award, then being in the possession of Sir John Lysley, and now withholden by Sir *Richard le Scrope*, who by champerty bought the same. The cause was this upon the petition of Windsor against Lysley; they both compromitted the matter to the King's order; the King committeth the same to the council; they digesting of the same made a *decree* for Windsor under the Privy Seal; they sent warrant to the Chancellor to confirm the same, which was done under the Great Seal by a special *injunction* to Lysley and a writ to the sheriffs to execute the same. After this, Lysley, by *petition to the King*, requireth that the same might be determined *at the common law*, notwithstanding any former matter; the King accordingly by Privy Seal giveth warrant to the Chancellor to make a *supersedeas*, the which was done by Privy Seal. After which Sir *Richard le Scrope* bought the same. Upon the *ripping*<sup>288</sup> of the whole matter this sale was thought no champerty; whereupon it was adjudged that the said Windsor should take nothing by his suit, but to stand to the *common law*, and that the said Richard should go without delay."<sup>289</sup>

<sup>286</sup> 2 Stat. of the Realm, p. 88; 1 'Statutes Revised,' edi. 1870, p. 265; 2 Reeve's Hist. of Engl. Law, ch. 17, ed. 1869, p. 470.

<sup>287</sup> vii. "Corn may be exported subject to order of council." viii. "The Statutes 5 Ric. II, St. 1, ch. 7, against riots, &c., recited; such riots prohibited, and sheriffs required to suppress them by the power of the county." ix. "The Statutes 13 Edw. I, St. 1, ch. 47; 13 Ric. II, Stat. 1, c. 19, for the preservation of salmons, &c., recited; the justices of peace shall be conservators of the recited statutes; under-conservators appointed by the justices; the justices shall enquire of offences at the sessions; the mayor of London shall have the conservancy of the statutes in the waters of the Thames." x. "Two lawyers shall be commissioners

of jail delivery." xi. "Aldermen of London shall not be removed without due cause." xii. "The Statute 28 Ed. III, c. 10, shall not extend to erroneous judgments in London." xiii. "For the ward of Farringdon, in London, two aldermen shall be elected."

The eighth chapter (as well as the sixth) is in 1 'Statutes Revised,' edi. 1870, pp. 265, 266.

<sup>288</sup> As to this word see next note.

<sup>289</sup> Cotton's Abr., pp. 351, 352, No. 10. Of this case there is a statement in 2 Inst., 533, and in 4 Inst., 83. It is in 2 Inst., 533, that Lord *Coke's* statement concludes thus: "Upon the *deliberate hearing* of the whole matter *by the lords of parliament*, it was resolved that the purchase of the said manors was no champerty; and it was adjudged that Sir

No. 18. "Sundry of the Bishops and Lords in the Parliament assented that the King might shew favour and pardon to the late justices banished into Ireland, touching their return; whereof the Commons being demanded make the like answer, so as they incur not the breach of their oath and conscience by the statute therefore made."<sup>290</sup>

In 'Statutes of the Realm,' there is nothing of the parliament at Westminster in 18 Ric. II, in January (1394-5)<sup>291</sup> when the Chancellor of England stated "that the Duke of Gloucester was sent into the realm to declare the King's passage into Ireland."<sup>292</sup>

25. *Of Richard's character; the beneficial influence of good councillors. Of his course during his marriage with Anne of Bohemia; and the different course after the 'good Queen' died, especially after his alliance in 1396 with Isabella, daughter of the King of France.*

"Richard's personal character throughout the reign is a problem; in the earlier years because it is almost impossible to detect his independent action, and in the later ones because of its surprising inconsistencies; and both earlier and later because where we can read it, it seems so hard to reconcile with the recorded impressions of his own contemporaries."

Giving due weight to this observation of Mr. Stubbs<sup>293</sup> it is to be remembered that Richard's reign began in July 1377; and on the 3d of May 1389, he was in his twenty-second year, or not more than three and twenty.<sup>294</sup> During his childhood the administration of the government, though in his name, was by the council. In June, 1381, when for a time 'disorder had grown beyond control of the council,' there was on the part of Richard greater boldness and prudence than could be expected from a young prince not quite sixteen years of

John de Wyndesore should take nothing by his suit, but stand to the common law, and that Sir *Richard le Scroop* go without day."

<sup>290</sup> Cotton's Abr., p. 353.

<sup>291</sup> The parliament was called for 'the Quindene of St. Hilary.' On 'Wednesday, the 15th of St. Hilary,' it 'by the assent of the Duke of Yorke, the king's uncle and warden of England,

was adjourned until the next day.' Cotton's Abr., p. 358. This parliament sat from Jan. 27 to Feb. 15. 2 Stubbs's Const. Hist., ch. 16, p. 484.

<sup>292</sup> "The Lords and Commons towards the conquest of Ireland grant to the king one-tenth and one-fifteenth." Cotton's Abr., p. 358.

<sup>293</sup> 2 Const. Hist., ch. 16, p. 499.

<sup>294</sup> See § 20, *ante*, p. 684.

age.<sup>295</sup> The youth 'who had discovered so much courage, presence of mind and address, and had so dextrously eluded the violence of this tumult, raised great expectations in the nation.'<sup>296</sup> Yet he was held by his uncles in a subjection<sup>297</sup> which, though authorized as to one no older than Richard then was, may have been of a kind not the best calculated to cause fulfilment of such expectations; and may have enabled Robert de Vere, earl of Oxford, to acquire over Richard a greater influence<sup>298</sup> than probably would have been acquired if his uncles and lawful councillors had in a proper and becoming way shown greater consideration for him. Such measures as were taken by him in 1386<sup>299</sup> might never have been taken if at that period his council had been what it was during the two years and a half that *William of Wykeham* was his Chancellor. It is admitted that from the 3d of May, 1389, when he acted as stated in § 20, p. 684, his authority was exercised with moderation,<sup>300</sup> for a considerable time; not only during the whole period of Wykeham's chancellorship, but during most of that of Thomas of Arundel. It is observed by Mr. Green that "for nine years the young king wielded the power which thus passed into his hands with singular wisdom and good fortune";<sup>301</sup> and by Mr. Stubbs that "*for eight years Richard governed England as, to all appearance, a constitutional and popular king.*"<sup>302</sup> With this "period of eight years of peace" is connected the suggestion that the influence of Queen Anne of Bohemia may have led Richard to cultivate the arts of *peace*."<sup>303</sup>

<sup>295</sup> 4 Collyer's Engl., p. 175.

<sup>296</sup> *Id.*, p. 180; 2 Hume's Engl., ch. 17, pp. 286, 287, of N. Y. edi. 1850.

<sup>297</sup> *Id.*, p. 288.

<sup>298</sup> 4 Collyer's Engl., edi. 1775, p. 182; 2 Hume's Engl., ch. 17, p. 288, of N. Y. edi. 1850.

<sup>299</sup> § 17, *ante*, p. 674.

<sup>300</sup> 4 Collyer's Engl., edi. 1775, p. 188; 2 Hume's Engl., ch. 17, p. 297, of N. Y. edi. 1850.

<sup>301</sup> Green's Short Hist., ch. 5, § 5, p. 27. "The rule of Richard the Second, after his assumption of power, had shown his capacity for self-restraint. Parted by his

own will from the counsellors of his youth, calling to his service the lords appellant, reconciled alike with the baronage and the parliament, the young king promised to be among the noblest and wisest rulers that England had seen." Hist. of Engl. Peop., book 4, ch. 4, pp. 509, 510, of vol. 1.

<sup>302</sup> 2 Const. Hist., ch. 16, p. 483.

<sup>303</sup> *Id.*, pp. 487, 488. She is mentioned as "a princess of great accomplishments, and of still greater virtue, who during the twelve years of their union possessed the affections of her husband, and after her death was long remembered by the

"It was through her patronage "that the tracts and bible of the Reformer had been introduced into her native land, to give rise to the remarkable movement which found its earliest leaders in John Huss and Jerome of Prague."<sup>304</sup>

In 1394 Queen Anne died at the palace of Shene.<sup>305</sup>

"On the occasion of" her "funeral, Richard conceiving that the procession had been kept waiting by" (the earl of) "Arundel, lost his temper and struck him with so much violence as to draw blood, and so, in ecclesiastical language, polluted the church at Westminster."<sup>306</sup>

Considering that Isabella, daughter of Charles VI of France was not born till 1387, Nov. 9, it caused great wonder in England that Richard should wish her for a second wife; but her youth is mentioned as 'one of his reasons for preferring her.' In 1396 a treaty for the marriage was signed; in the fall of that year the two kings met in France; "on the Tuesday which was All Saints' day (Nov. 1), the king of England was married by the archbishop of Canterbury, in the church of St. Nicholas at Calais, to the Lady Isabella of France."<sup>307</sup>

After this alliance there was a material change in Richard's course.<sup>308</sup>

people under the appellation of the 'good Queen Anne.'" 4 Lingard's Engl., ch. 3, p. 185.

<sup>304</sup> Green's Short Hist., ch. 5, § 5, p. 276. "The Lollard books which were sent into their native country by the Bohemian servants of the new queen, stirred the preaching of John Huss and the Hussite wars." Hist. of Engl. Peop., book 4, ch. 4, p. 497, of vol. 1.

<sup>305</sup> 4 Lingard's Engl., ch. 3, p. 229. She was buried "on Monday, the third of August," at Westminster. There, in the abbey, is a monument to her memory. Froissard, i. 295, of N. Y. edi. 1858. According to the inscription she 'passed away' on July's seventh day.' Yet the king's letter, mentioning her death, is dated 'the 10th day of *June*,' as printed in Miss Strickland's Queens of England, vol. 2, page 221, of Phila. edi. 1857.

<sup>306</sup> 2 Stubbs's Const. Hist., ch. 16, pp. 489-490. In the same year (1394) "the dukes of Lancaster and York lost their wives, who were sisters; and the countess of Derby, who was also sister-in-law to Gloucester, died. The domestic relations of the royal house were largely modified by this; John, of Gaunt, now married Catharine Swinford, the mother of his children, and obtained for them recognition as members of the royal family." *Id.*, p. 490. They were "three sons and one daughter of the surname of Beaufort, from Beaufort Castle in France, in which they were born. 4 Lingard's Engl., ch. 3, p. 234.

<sup>307</sup> Froissard, ch. 73, p. 577, and ch. 80, pp. 585, 586, of N. Y. edi. 1858; 10 Harl. Miscel., p. 303, edi. 1810.

<sup>308</sup> 4 Lingard's Engl., ch. 3, p. 235; 2 Stubbs's Const. Hist., ch. 16, p. 490.

26. *How the office of Master of the Rolls was filled during this reign.*

*William de Burstall* (mentioned in ch. 19, § 52, p. 624) continued Master of the Rolls during the first four years of Richard's reign.<sup>309</sup>

*John Waltham* received his patent as Keeper of the Rolls Sept. 8, 1381.<sup>310</sup> As his predecessor was, so Waltham became, keeper of the House of Converts, a benefice which was ever after appended to the office of Master of the Rolls.<sup>311</sup> He resigned both October 24, 1386, and was then appointed Keeper of the Privy Seal.<sup>312</sup>

*John de Burton*<sup>313</sup> was appointed Master of the Rolls Octo. 24, 1386, and held the office till July 22, 1394.<sup>314</sup>

On that day he was succeeded by *John de Scarle*.<sup>315</sup> He held the

<sup>309</sup> He died in 1381. Foss's Biogr. Jurid.

<sup>310</sup> Besides being one of those to whom, as stated in § 11, p. 661, the custody of the Great Seal was entrusted, in 1382, from July 11 to September 10, he performed the like duties in 1386 on two occasions; on one, from Feb. 9 to March 28, two clerks of the chancery were associated with him; on the other, from April 23 to May 14, he acted alone. *Id.*

<sup>311</sup> Ireland's Inns of Court, edi. 1800, sect. 15, pp. 203, 204.

<sup>312</sup> In the meantime his ecclesiastical preferments were numerous. He became successively canon of York, archdeacon of Richmond, master of Sherburn hospital, Durham, and sub-dean of York. While holding the office of Master of the Rolls, he alleging that it was incumbent on him to visit his archdeaconry, obtained a patent enabling him, as often as he should absent himself for that or any other reasonable cause, to depute any person whom the chancellor should consider sufficient to exercise his office in his absence; the power of such deputy to cease after his return. He had not long resigned the mastership of the Rolls before he was elected bishop

of Salisbury; the papal provision being dated April 3, 1388. He was called upon, in 1391 (14 Ric. II), to serve in the office of treasurer, and retained it till his death, about Sept. 17, 1395. Then "the king, notwithstanding the murmurs of many objectors, caused his remains to be interred in the royal chapel of Westminster Abbey, where they now lie near the monument of Edward I." *Id.*

<sup>313</sup> "Whether he was the John de Burton who held benefices about this time in Cambridgeshire and Yorkshire, and was very liberal to the institutions of these counties, is uncertain." Foss's Biogr. Jurid.

<sup>314</sup> That he died in possession of this office is proved by the mandate to give up the Rolls of the chancery, being directed not to him but his executors. *Id.* During the chancellor's absence, he was, in 1393, from March 26, till April 19, entrusted with the Great Seal, together with John de Ravenser, as stated in § 23, p. 694.

<sup>315</sup> So called from a place of that name in Lincolnshire, in which county some of his family were located in the reign of Edw. III. He was a clerk of the chan-



office about three years and two months, during which he several times acted as keeper of the Great Seal. With *William de Waltham*<sup>316</sup> keeper of the Hanaper about 18 Ric. II, *John de Scarle* had the temporary custody of the Great Seal on October 1. Again it was in his possession when Archbishop Arundel was removed, Nov. 23, 1396. On September 16, 1397, Scarle resigned the mastership of the Rolls and resumed his position as clerk in the chancery.<sup>317</sup>

*Thomas de Stanley*<sup>318</sup> was constituted Master of the Rolls Sept. 11, 1397.<sup>319</sup>

27. In 1396 additions to the Common Pleas; *Thomas de Arundel* succeeded *William de Courtney* as Archbishop of Canterbury and resigned the Great Seal. It was delivered (in Nov.) to *Edmund de Stafford*, bishop of Exeter. Proceedings and statute of parliament. Arrest of the Duke of Gloucester, Earl of Arundel, and also of Warwick.

In 1396 (19 Ric. II), January 15, *William Thirning* (mentioned in § 19, p. 682) was raised to the chief seat in the Common Pleas;<sup>320</sup> on July 7 *John Markham*<sup>321</sup> was raised to the same bench.

The death of William de Courtney, Archbishop of Canterbury, having occurred July 31, *Thomas de Arundel* was translated to the province of Canterbury<sup>322</sup> and resigned the Great Seal Sept. 27. It

cery of the higher grade as early as 6 Ric. II (1382), from which year, till 1397, he was always one of the receivers of petitions in parliament, of which he also acted as clerk for the eight years between 9 and 17 Ric. II. Foss's Biogr. Jurid.

<sup>316</sup> In 21 Ric. II, he granted a messuage and a shop in St. Martin's-le-Grand, London, to the abbot and convent of Croyland. *Id.*

<sup>317</sup> *Id.*

<sup>318</sup> One of the clerks of the chancery, from 11 Ric. II, when he first appears as a receiver of petitions. He held this place for ten years. *Id.*

<sup>319</sup> He was on the banishment of Henry of Lancaster, in 1398, selected as one of his attorneys during his absence. *Id.*

<sup>320</sup> Foss's Biogr. Jurid.

<sup>321</sup> Of Sedgebrook, in Lincolnshire, whose ancestors were settled at a village, so called, in Nottinghamshire. John was son of Robert Markham, a serjeant-at-law in the reign of Edward III, by a daughter of Sir John Caunton, knight. It is said that he received his legal education at Gray's Inn, and became a king's serjeant in 1390 (14 Ric. II.) *Id.*

<sup>322</sup> Mentioned as the first instance of a removal from one archbishopric to the other. Foss's Biogr. Jurid. Mr. Stubbs states that Arundel "immediately held a council which condemned heretical propositions; but political affairs prevented any new legislation" in this reign. 3 Const. Hist., ch. 19, p. 357.

was delivered, Nov. 23, to *Edmund de Stafford*,<sup>323</sup> bishop of Exeter.

At Westminster in 20 Ric. II, 'the Monday in the feast of St. Vincent' (Jan. 22, 1397), "the King being in the Parliament, the Bishop of Exeter, being the chancellor, declared the cause wherefore the Parliament was called."<sup>324</sup>

"On Tuesday following, the Commons chose Sir John Bussey to be their speaker, whereto the King agreed."

After other proceedings, on Wednesday and Thursday, "the chancellor declareth to the Commons that he and others of the King's officers would come the next parliament and debate with them of weighty affairs."

"On Friday, in Candlemas week, the Chancellor, being willed by the King to declare the conference with the Commons, answered that they required four points" (naming them). The fourth was, "for the avoiding the outrageous expences of the King's House and namely of Bishops and Ladies."

"The King by his own mouth answereth to every article, and touching the fourth, seemed much offended, saying that he would be free therein; and that the Commons thereby committed offence against him, his dignity and liberty; the which he willed the Lords to declare the next day to the Commons."

"And further willed the Duke of Lancaster to charge Sir *John Busscy*, Speaker of the Parliament, to declare the name of him who exhibited the same bill."

"After this declaration made by the Lords to the Commons, the Saturday ensuing, they delivered the name of the exhibitor, which was Sir *Thomas Haxie*; the which bill was delivered by the clerk of the Parliament to the clerk of the Crown. After which the Commons forthwith came before the King, shewing themselves heavy of cheer; and declaring that they meant no harm, they submitted themselves to the King and most humbly craved pardon."

"The Chancellor, by the King's commandment, declared that the King held them excused."

"Sir *Thomas Haxie*, by Parliament adjudged to die as a traitor. The Archbishop of Canterbury, and other bishops, craved of the King that the said Thomas might have life; the which the King granted. That done, they, for the honesty of the church, required that he might remain in their keeping, the which the King also

<sup>323</sup> Born about 1345; grandson of Sir Richard de Stafford of Clifton, in Staffordshire, who was younger brother of Ralph, created Earl of Stafford in 1351, and son of another Richard, who was summoned to parliament as a baron in 1371. Edmund was educated for the

priesthood; appointed dean of York in August, 1385; became keeper of the Privy Seal in 1391, and was raised to the bishopric of Exeter Jan. 15, 1395. *Id.*

<sup>324</sup> Cotton's Abr., p. 360.

granted, and commanded Sir Thomas Sercie, steward of his household, to deliver the said *Thomas Haxie* to the Archbishop."<sup>325</sup>

The subjoined proceedings<sup>326</sup> have greater interest than would otherwise pertain thereto, because of the fact appearing in ch. 22, § 7 and § 13, pp. , , that of the children of John of Gaunt (duke of Lancaster) by Catharine Swinford, Henry Beaufort, the second son, became Chancellor of England in 1403, and his younger brother, Thomas, received the Great Seal in 1410.

This parliament sat until Feb. 12.<sup>327</sup> Its statute<sup>328</sup> has six chapters.

<sup>325</sup> Cotton's Abr., pp. 361, 362, No. 14 to 17, and No. 23; 2 Stubbs's Const. Hist., ch. 16, p. 491 to 493; 4 Lingard's Engl., ch. 3, p. 237, *note*. In 1 H. IV, "Upon the petition of Sir *Thomas Haxey*, clerk, the king pardoneth and revoketh the judgment made against him in *An. xx*, R. II, tit. 23, restoreth him to the blood and to the recovery of all his goods livings, lands and tenements." Cotton's Abr., p. 393, No. 91.

<sup>326</sup> 28. "The King, as sole Emperor of the Realm of England, for the honour of his blood, willet, and of his full power enabled and made *mulier*, of his proper authority, Sir John Beauford, his brothers and sisters, and also published their legitimation, according to the form of his charter (the which was read in full parliament), and delivered the same to the Duke of Lancaster, their father.

29. The like charter was made to John Knight, Henry Clarke, Thomas de Damosells and Joan Beauford, the damosel and dear children of John, Duke of Lancaster.

30. The Chancellor then declared how that the King had created the said John, his cousin, Earl of Somerset, to have to him and the heirs males of his body lawfully begotten, with £20 in the like manner yearly of the profits of the county of Somerset.

31. Whereupon the same John was

brought before the King in parliament between the Earls, viz: of Huntington and Marshall, arrayed in a robe, as in a vesture of honour, with a sword carried before him; the pomel whereof being gilded. And the charter of his creation was openly read before the Lords and Commons; after which the King girded him with a sword aforesaid, took his homage and caused him to be set in his place in the parliament, viz: between the Earls Marshall and Warr.

32. The charter of the said creation. The King granteth to the Earl of Nottingham and to the heirs males of his body lawfully begotten: the office, name and title of Earl Marshall of England; the office of Marshall in the King's Bench and in the Exchequer; the office of Proclaimer Marshall; the Steward and Marshall of the King's household; and further that the said Earl and his heirs males, Marshalls of England, by virtue thereof, may carry before them a certain golden staff enamelled black at both ends, with the King's arms at the upper end and his own arms at the nether end; the which charter was openly read in the parliament and delivered to the said Earl." Cotton's Abr., pp. 363, 364.

<sup>327</sup> 2 Stubbs's Const. Hist., ch. 16, p. 491.

<sup>328</sup> 2 Stat. of the Realm, p. 92 to 94.

Thereof the marginal statements are subjoined.<sup>329</sup>

"When the earls of Arundel and Gloucester withdrew, as they shortly did, from the court, after a personal altercation with" the King, "in which his uncle reproached him for his indolence, he determined to forestall any designs which they might have against him."—"Gloucester, Arundel and Warwick were supposed to be acting together. And Richard was informed by Nottingham that at Arundel they had formed a formidable conspiracy against him. He determined to anticipate them, and invited them to a royal banquet on the 8th of July; only Warwick attended, and he was arrested."<sup>330</sup>—"A few hours afterwards Arundel, having, as his brother declared, obtained from Richard a promise that he should suffer no bodily harm, surrendered, and the same night the King, with his half-brother, the earl of Huntingdon, the earl of Kent, his nephew, Rutland his cousin, and Nottingham, went down to Pleshy and seized the duke of Gloucester, who was forthwith sent in custody to Calais."<sup>331</sup>

28. *In 1397, at Westminster, in Sept., Parliament opened by the Bishop of Exeter as Chancellor. Who was Speaker of the Commons; and Proctor of the Clergy. What pardons were repealed. How there was impeachment of and judgment against Thomas Arundel, archbishop of Canterbury, for acts in his chancellorship. How judgments were rendered against the dead. What was done as to the living. Proceedings in session at Shrewsbury in Jan. 1397-8. Stat. of 21 Ric. II. As to Stat. 10 Ric. II, questions put to judges; and answers. On those answers what was said by Wm. Hankford, Wm. Brenchesley and Wm. Thirning.*

In 21 Ric. II (1397) Parliament met at Westminster on Sept. 17.<sup>332</sup>

<sup>329</sup> i. "Recital of St. 7 R. II, c. 13: confirmation thereof; no man shall ride or go armed; the Statute 1 Ric. II, c. 7, touching giving of liveries confirmed;" ii. "Liveries of companies restrained;" iii. "None shall sit upon the bench with justices of assize;" iv. "Recital of St. 28 Edw. III, ch. 13, concerning merchants strangers: confirmation thereof;" v. "Penalty for taking horses, &c., for the King's service without warrant;" vi. "License to Belknap and others to return to England notwithstanding Statute 11 Ric. II."

<sup>330</sup> "The order for the arrest was given

by the advice of the earls of Rutland, Kent, Huntingdon, Nottingham, Somerset and Salisbury; Thomas le Despenser, and the under-chamberlain, William le Scrope. This was declared by Richard in giving notice of the arrest, July 15, to the sheriffs. (Rymer viii, 7; cf. Ann. Ricards, p. 206.) 2 Stubbs's Const. Hist., ch. 16, p. 493, and note 1.

<sup>331</sup> *Id.*, pp. 493, 494. At a gathering of the king's partizans at Nottingham, it was arranged on Aug. 5 that the prisoners shall be appealed of treason; for what acts and by whom. *Id.*, p. 494.

<sup>332</sup> Sept. 14 is the day of 'Exaltatio

In the King's presence, and by his command, the Bishop of Exeter as Chancellor of England, declared for what 'the Parliament was called.' Next day the Commons presented Sir *John Bussey* for their Speaker.

"For that divers judgments were heretofore undone, for that the Clergy were not present, the Commons prayed the King that the Clergy would appoint some to be their Common Proctor."—"The Bishops therefore being severally examined, appointed Sir *Thomas Percie* their Proctor."

"Sir John Bussey rehearsed in effect, the oration made by the Chancellor," and "sheweth further."<sup>333</sup> Then there is a repeal or revocation of certain pardons.<sup>334</sup>

15. "The Commons, in full Parliament accused *Thomas Arundel*, archbishop of Canterbury, that when he was chancellor he procured, and as chief, executed, the same commission made traitorously in the tenth year of the King. And also for that the said archbishop procured the Duke of Gloucester and the Earls of Arundel and War, to encroach to themselves royal power and to judge to death *Simon de Burleigh* and Sir *John Barnes*<sup>335</sup> without the King's assent. Whereupon the Commons required that the same archbishop might rest under safe keeping."

On the next day<sup>336</sup> "the Commons prayed the King to give judgment on the same Archbishop, according to his desert. The King announced that privately the said Archbishop had confessed to him how he mistook himself in the same commission, and therefore submitted himself to the King's mercy. Wherefore the King, Lords and the said Sir *Thomas Percie* adjudged the fact of the said Archbishop to be treason, and himself a traitor. And therefore it was ordered that the said Archbishop should be banished; his temporalities seized, his lands and goods forfeited as in fee, as in use, as in possession. The King farther prescribeth that the said Archbishop should take his passage on Friday in the six weeks of Michaelmas, at Dover, towards the ports of France."<sup>337</sup>

S. Crucis.' This parliament was holden "the Monday next after the exaltation of the cross." Cotton's Abr., p. 367. It is stated by Mr. Stubbs that parliament met "on the 17th of September." 2 Const. Hist., ch. 16, p. 494.

<sup>333</sup> Cotton's Abr., pp. 367, 368.

<sup>334</sup> To the Duke of Gloucester and the Earls of Arundell and Warr, in 11 Ric. II; and to Richard, Earl of Arundell, in 16 Ric. II. *Id.*, p. 368, Nos. 12, 13.

<sup>335</sup> Cotton's Abr., p. 368. The name is James Berners in 1 St. Tr., pp. 123, 124.

<sup>336</sup> *Id.* As to the day there seems to be a misprint in Cotton's Abr., p. 368, No. 16. Mr. Stubbs states as to the archbishop that "on the 25th he was sentenced to banishment." 2 Const. Hist., ch. 16, p. 495.

<sup>337</sup> Cotton's Abr., p. 368, Nos. 15, 16; 1 State Tr., pp. 123, 124.

For the articles of the Lords appellants against the Duke of Gloucester, the earls of Arundel and War, &c., and Sir Thomas Mortimer, and for the proceedings thereupon, reference may be had to the volumes mentioned below.<sup>338</sup> Therein it may be seen that in some cases wherein by reason of previous *death* judicial *murder* could not be perpetrated, *judgments* were rendered against the *dead*. The commandment to the Lieutenant of the Marshal of England, to do execution upon Richard, earl of Arundel, is followed by this:

"Upon a writ sent to Thomas, Earl-Marshall, Captain of Callice, to bring forth the body of Thomas, Duke of Gloucester, the said Captain returned the said Earl was dead in his keeping in the King's prison at Callice. After which return read in Parliament, the Lords appellants, in proper person, required that the said Duke might be adjudged even as a traitor; the Commons required the same: whereupon the Duke was adjudged a traitor; and that he should forfeit all such lands in fee or feetail, as he had the thirteenth day of November, in the eleventh year of the King, and all his goods and chattels."<sup>339</sup>

Then there is an affirmation of a confession stated to be made by the said Duke.<sup>340</sup> After which is this:

"The eighteenth day of March, in the two and twentieth year of the King, the King by assent of the Lords, as having full authority therein, doth adjudge Sir Robert Pleasington, Knight, then dead, a traitor, as procuring, with the Duke of Gloucester, the levying of war at Harringey, for which he should lose all such his lands in fee or feetail, and goods which he had the thirteenth of November, in *anno* 11."<sup>341</sup>

The Earl of *Warwick* being brought from the Tower, and confessing what he was accused of, there was judgment against him as to his lands and goods; and that he remain banished during life in the Isle of Man.<sup>342</sup>

<sup>338</sup> Cotton's Abr., p. 376 to 379; 1 State Tr., p. 126, *et seq.*; 4 Collyer's Engl., p. 193 to 195, of *edi.* 1775; 2 Hume's Engl., ch. 17, p. 300 to 303, of N. Y. *edi.* 1850; 4 Lingard's Engl., ch. 3, p. 238 to 245; 2 Stubbs's Const. Hist., ch. 16, pp. 495, 496.

<sup>339</sup> Cotton's Abr., p. 378, No. 9; 1 State Tr., pp. 130, 131.

<sup>340</sup> As to which confession see 1 State

Tr., p. 131 to 134; and Cotton's Abr., p. 393, No. 93. As to the murder of the Duke of Gloucester, see *Id.*, p. 400, No. 11 to 16; 1 State Tr., pp. 162, 163; and Foss's Biogr. Jurid., tit. 'Rickill William.'

<sup>341</sup> *Id.*, p. 381, No. 27.

<sup>342</sup> Cotton's Abr., p. 379, Nos. 12, 13, 14; 1 State Tr., 134.

*Thomas Mortimer*, 'who was fled into the wild parts of Ireland,' was adjudged attainted, and to forfeit his lands and goods.<sup>343</sup>

Sir *John Cobham*, Knight, as to matters for which he was impeached, 'answered that *he did not the same of his own procuring, but by the King's sundry commandment.*' Nevertheless he was pronounced a traitor, and adjudged to forfeit lands and goods and 'remain in prison in the Isle of Jersey during his life.'<sup>344</sup>

On Saturday, in Michaelmas week (Sept. 16), there is mention of some whom the King in Parliament excused as innocent;<sup>345</sup> and of some whom he advanced.<sup>346</sup>

The same Saturday, parliament was adjourned to Shrewsbury.<sup>347</sup>

"On Monday after the Quindene of Hilary,<sup>348</sup> the King, Lords and Commons assembled at Shrewsbury,<sup>349</sup> according to the adjournment, where the Chancellor declared that the cause of the parliament was that the whole church and all persons should have their liberties, and that there should be no Governors within the realm but one."<sup>350</sup>

50. "The clergy gave the like power to Sir *William le Scroope*, of Wilts, to answer for them as they late did to Sir *Thomas le Percie*."

55, 56. "Thomas le Despencer, earl of Gloucester, exhibiteth two bills, requiring by the first that the revocation of the exile of Sir Hugh le Despencer, the father of his ancestor, made in 15 E. II, might be brought before the King and confirmed, and that the repeal of the same made in 1 E. III, might be revoked. The second requireth the like for Sir Hugh le Dispencer, the son, and his ancestor."

<sup>343</sup> Cotton's Abr., p. 369, No. 19, and p. 379, Nos. 15, 16; 1 State Tr. 134.

<sup>344</sup> Cotton's Abr., p. 379, No. 17; 1 State Tr., 134, 135.

<sup>345</sup> Cotton's Abr., p. 369, No. 26. Among them are Sir Richard le Scrope, then living, and William, late Archbishop of Canterbury.

<sup>346</sup> His cousin Henry, earl of Darbie, created Duke of Hereford; Sir Edward, Earl of Rutland, created Duke of Aumerle; Sir Thomas de Holland, Earl of Kent, created Duke of Surry; John de Holland, Earl of Huntington, created Duke of Exeter; Sir Thomas Mowbray, Earl of Nottingham, created Duke of Norfolk; Margaret Marshall, Countess

of Norfolk, created Duchess of Norfolk; Sir Ralph Beauford, Earl of Somerset, created Marquis Dorset; Thomas le Despencer created Earl of Gloucester; Ralph Lord Nevill created Earl of Westmoreland; Sir Thomas de Percie created Earl of Worcester; and Sir William le Scroope created Earl of Wiltshire. *Id.*, p. 370, No. 35.

<sup>347</sup> *Id.*, No. 36.

<sup>348</sup> January 14 is the day of St. Hilary. Mr. Stubbs mentions "that the parliament of Shrewsbury met on the 28th of January." 2 Const. Hist., ch. 16, p. 497.

<sup>349</sup> Distant from Stafford 31, Birmingham 43, and London 153 miles.

<sup>350</sup> Cotton's Abr., p. 371, No. 44.

65. "The Lords being severally demanded what they thought of the said repeal made in the 1 E. III, thought the same unlawful; whereupon the King, by full assent, revoketh the repeal aforesaid and confirmeth the revocation made 15 E. III, and restoreth the said Earl to all the inheritance of the said Hugh, and to all actions, ancestors of the said Hugh and Hugh."<sup>351</sup>

The statute of 21 Ric. II (1397-8),<sup>352</sup> after confirming 'liberties and franchises,' recites in ch. 2, 'the commission and statute of 11 Ric. II,'<sup>353</sup> and the 'tenor of the commission,' and repeals said statute and commission.<sup>354</sup> Opposite other chapters are the subjoined statements.<sup>355</sup> The following are on pages 102 and 103 (of 1 Stat. of the Realm) opposite ch. 112:

"Questions put to the judges An. 11 Ric. II, respecting the statute 10 Ric. II, and the commission then made": If derogatory to the King's prerogative? How the procurers, &c., were punishable? Whether the parliament can proceed on other business than that limited by the King? The King's power to dissolve the parliament. Impeachments in parliament. Production of the record of the deposition of King Edw. II. Judgment against the Earl of Suffolk in 10 Ric. II."

<sup>351</sup> *Id.*, p. 371 to 373. In the last line there may have been after *actions*, and before *ancestors*, an omission of the word *of*.

<sup>352</sup> 2 Stat. of the Realm, p. 94 to 110.

<sup>353</sup> *Id.*, p. 43 to 55; cited in § 18, pp. 680, 681, note.

<sup>354</sup> 2 Stat. of the Realm, p. 98. It made, moreover, "that no such commission, neither such like, be from henceforth purchased, pursued nor made; and he that purchaseth, pursueth, or procureth to be made any such commission, or any like time coming, privily or apertly, or use jurisdiction or power by virtue of any such commission, and of the same be duly convict in the parliament, he shall be adjudged for a traitor." *Id.*

<sup>355</sup> "Compassing the king's death, or his deposition, or the surrender of liege homage, or to raise the people against

him hostilely, declared treason." iv. "Attempting the repeal of any judgments or statutes of this parliament declared treason." v. "Oaths, &c., of the lords shall be recorded on the parliament roll and enrolled in chancery." vi. "Issue made of persons attainted excluded from parliament." vii. "Anuities, &c., granted by traitors repealed." viii. "Collation to benefices forfeited by persons attainted given to the king." ix. "County of Chester erected into a principality; castles and towns annexed to the same, and limited to the king's eldest son." x. "Castle and sheriffwick of Worcester, &c., vested in the king." xi. "Sheriffwick, &c., of Essex, vested in the king." xii. "Opinions of certain judges in 11 Ric. II, concerning the statute and commission 10 Ric. II, approved, and the proceedings in the parliament, in 11 Ric. II, repealed.



The following are on page 104 (of same vol.) opposite same chapter, 112:

"All the said answers declared legal; repeal of all proceedings in parliament 11 Ric. II; the parties restored to their lands; proviso in favor of purchasers; *scire facias* for such as sue for restitution; no protection, &c., therein."

The statements opposite the remaining chapters are as subjoined.<sup>356</sup>

On the answers made by the judges to the questions propounded to them by Chief Justice Tresilian, *William Hankford*,<sup>357</sup> by desire of the parliament, in January, 1398, gave his opinion, declaring those answers "to be good and loyal, and such as he himself would have given under the circumstances."<sup>358</sup> He was appointed to the bench of the Common Pleas on the 6th of May following.<sup>359</sup>

*William Brenchesley*<sup>360</sup> gave a like opinion; and in the following year is found on the same bench.<sup>361</sup>

<sup>356</sup> xiii. "Reversal of the judgment in parliament, in 10 Ric. II, given against Michael de la Pole, Earl of Suffolk; the heirs of the Earl restored to the lands forfeited." xiv. "Actions for certain robberies, riots, &c., extinguished." xv. The King's general pardon; in consideration of a subsidy; exceptions." xvi. "Authority given by parliament to certain commissioners to answer petitions; the Statute 13 R. II, c. 12, respecting tanners and shoemakers, recited and confirmed." xvii. "No licenses allowed for exporting staple merchandizes, except to Calais." xviii. "Stones shall be carried for ballast towards the repair of the beacons, &c., at Calais." xix. "Recital of St. 25 Edw. III, Stat. 3, ch. 4; 45 Edw. III, ch. 2, against enhancing and straitening of wears, mills, stanks, &c.; recited statutes confirmed; commissioners shall be appointed to execute the statutes, and to survey the wears, and to redress offences; freeholder shall remove wears on award of such commissioners, &c.; penalty for default, or for

enhancing wears, &c., 100 marks." xx. "Attempting the repeal of any of these statutes declared treason."

<sup>357</sup> He was born at a place of that name at Bulkworthy, in the parish of Buckland Brewer, in Devonshire, and was second son of Richard Hankford, of an ancient and wealthy family, to whose large estates he eventually succeeded. He is first mentioned as one of the king's serjeants at law in 14 Ric. II (1390). Foss's Biogr. Jurid.

<sup>358</sup> *Id.* Mr. Foss says: "It is to be hoped that this opinion was prompted rather by his fears of the danger that hung over him had he pronounced any other, than by the temptation of being raised to the seat on the bench of the Common Pleas then vacant." *Id.*

<sup>359</sup> *Id.*

<sup>360</sup> By his marriage with Joane de Benenden, he became lord of the manor of Benenden, near Cranbrook, in Kent. He is mentioned in Bellewe's Reports, and was one of the King's serjeants in 14 Ric. II. *Id.*

<sup>361</sup> *Id.*

More remarkable than the case of either of these two is that of *William Thirning*, the Chief Justice of that bench; mentioned in a succeeding section (§ 30).

29. *Extraordinary judgment by the King in cases of the Duke of Norfolk and Duke of Hereford. Of Richard's other conduct in 1397 and 1398 to the latter (John of Gaunt's son, Henry); and events in 1399 until Richard was placed in the Tower. How and when Edmund de Stafford ceased to be Chancellor. Of the chancellorship of Thomas de Arundel for about ten days, and of John de Scarle for twenty-five days before Richard was deposed.*

The entry mentioned in § 28, p. 707, of some excused as innocent, is followed by this:

No. 27. "The King also declareth that Henry, Earl of Darby, and Thomas Mowbray, earl of Nottingham, had loyally used themselves towards the King by coming from the Duke of Gloucester and from the Earls of Arundel and War (traitorously assembled) in defence of the King; the which Earls of Nottingham and Darbie, the King by parliament took as 'obeysant lieges.'<sup>362</sup>

As stated in the note on p. 707, Henry, earl of Darbie, was created Duke of Hereford; and Sir Thomas Mowbray, earl of Nottingham, was created Duke of Norfolk.

Thomas, Earl of Nottingham, though one of the Lords appellants who made accusations against the Duke of Gloucester and others,<sup>363</sup> and though by the King recognized as one of the 'obeysant lieges,' and advanced in dignity, it would seem from his conversation with the Duke of Hereford,<sup>364</sup> did not trust the King. The King, having in some way heard of the conversation, required Hereford to attend him, and then charged him to communicate the conversation to the council and to parliament.<sup>365</sup> What were Norfolk's designs, and whether or no they were engaged in by Hereford, may not appear. But it seems that Hereford was anxious for, and ob-

<sup>362</sup> Cotton's Abr., p. 369.

<sup>363</sup> *Id.*, p. 377.

<sup>364</sup> Of which Hereford's account is given in 4 Lingard's Engl., ch. 3, p. 248,

*note*, and is noticed in § 17, *ante*, p. 676,

677, *note*.

<sup>365</sup> *Id.*, p. 249.

tained, a pardon.<sup>366</sup> In the proceedings of the parliament wherein it was granted is the entry, shewing that he exhibited 'a schedule containing the accusations'; and that 'by act of parliament this whole matter was committed to sundry Nobles and Knights of the Commons.'<sup>367</sup>

"The nineteenth day of March, after the accusation aforesaid, both the Dukes appeared before the King at Bristow, where, by assent of Parliament, it was agreed that the determination of the same should be ended according to the law of chivalry, if sufficient proofs were not found."<sup>368</sup>

"The King named Gosford Green, a plot of considerable extent, in the close neighbourhood of Coventry, for the place of projected contest."<sup>369</sup> Sir Henry Ellis says:

"The King would have reconciled the parties, but they refused; and he then granted them the battle."—"The combatants prepared for it in all that ostentatious splendour which marked the gaiety of the tournament. Henry applied to Galeazzo, duke of Milan, for harness, who sent him four of the best armourers in Lombardy to fit him. De Mowbray employed his agents in Germany for the same purpose."—"As they approached to the fight, the King cast down his warder; the combatants retired to chairs prepared for them; and the council took some hours to deliberate upon the best course which, under circumstances, it seemed proper to pursue. The challenge was for words only; it was not clear on whom the first blame rested, whilst neither party was absolutely clear from fault. Finally, that neither might escape, both were ordered to be banished."<sup>370</sup>

The following is from records in the Tower:

"On the 28th day of April both the said Dukes appeared before the King at Windsor, to whom day was given over to appear there on Monday, the 29th of April."

21. "On which Monday, both the said Dukes appeared and the battle was joined betwixt them by the advice of a great number of Dukes, Earls, Bishops, Barons and Knights there assembled, as those who had authority by parliament; for that no sufficient proofs could, in the meantime be found."

22. "Notwithstanding, the King weighing the weightiness of the cause, and how high the said Dukes were to him in blood, for tender

<sup>366</sup> *Id.*, pp. 250, 251; Cotton's Abr., p. 373, No. 67.

<sup>367</sup> *Id.*, p. 372, No. 53.

<sup>368</sup> Cotton's Abr., p. 380, No. 19.

<sup>369</sup> 3 Dugdale's Engl. & Wales, p. 541, tit. *Coventry*.

<sup>370</sup> Orig. Letters, 3d series, vol. I, p. 47, edi. 1846.

love, took the battle into his own hands, and gave judgment, by authority of Parliament, that the said Duke of Hereford should, by a certain day then appointed, depart and avoid out of the realm for ten years, and that he should in no wise, during the same term come in the company of the said Duke of Norfolk or of Thomas *Swandell*" (supposed to be a misprint for *Thomas Arundell*), "neither send nor receive any letters or message from them on pain of treason; and that not for want of proof of his said accusation, for that he was ready therein to do his devoir."

23. "To the said Duke of Norfolk it was said that forasmuch as he had spoken certain words tending to great trouble, and therein recited, he was therefore banished the realm during his life, to avoid by a day there limited, and to remain in Almayne, Boheme, or Hungarie, and in no other parts of Christendom, and to pass over the sea in pilgrimage, and further as above on pain of treason; and that for no default that the said Duke had made in his defence, considering that therein he was ready to make his devoir."

24. "And when the King had given to the said Duke of Norfolk sundry manors, lands and tenements for joining in the appeal with the Lords appellants aforesaid wherein for that the said Duke failed to proceed without any good ground, the King adjudged, by act of Parliament that the said Duke should forfeit all the said lands, and all his offices during his life, together with all warranties, whereby any the King's ancestors were bound to any the ancestors of the said Duke."

25. "And also for certain payments behind, and due to the King by the said Duke, during such time as he was deputy of Callice, the King, by authority of Parliament, adjudged to seize into his hands all the hereditaments of the said Duke over and above Ml" (£1,000) "yearly, to be allowed to the said Duke until the King were satisfied."<sup>371</sup>

In February, 1399, John of Gaunt had died. Although the Duke of Hereford had had special leave to receive his inheritance, yet Richard (acting with the committee of parliament), on the 18th of March annulled the letters patent whereby that leave was given, took possession of the Lancaster estates, "and thus threw into open enmity the man who, but for the existence of the Earl of March, would have been his presumptive heir."<sup>372</sup>

<sup>371</sup> Cotton's Abr., p. 380; 4 Collyer's Engl., p. 197, *et seq.*; 2 Hume's Engl., ch. 17, p. 305, *et seq.*, of N. Y. ed. 1850; Hall. Mid. Ages, ch. 8, part 3, p. 124, of Phila. ed. 1824; 4 Lingard's Engl., ch. 3, p. 250, *et seq.*

<sup>372</sup> 2 Stubbs's Const. Hist., ch. 16, p. 501. De Mowbray seems to have

gone by way of Italy to the Holy Land; he reached Jerusalem, but on his way back died at Venice (it is said) in 1 Hen. IV. For money borrowed to pay his expenses, repayment from Hen. IV is solicited in letters. In Sir Henry Ellis's 3d Series of Orig. Letters, vol. 1, p. 47 to 52.

In this time, pregnant with danger, the infatuated monarch went to Ireland; having appointed his uncle, the Duke of York, regent during his absence. While occupied in Ireland with objects of inferior interest, there occurred in England a revolution which eventually deprived him of his crown and his life.<sup>373</sup>

When Richard sailed to Ireland, Henry of Bolingbroke, the new duke of Lancaster, resided in Paris. Thomas of Arundel, nominal bishop of St. Andrew's, secretly left his house at Cologne, and procured an interview with the Duke; which resulted in their determination to return to England during the King's absence.<sup>374</sup>

"Henry landed in Yorkshire on the 4th of July (1399), and the external features of the revolution of 1326 at once repeated themselves. Again the cause is the wrong done to Lancaster; again the invader marches westward, and as his prospect of success increases, his pretensions expand; again the northern lords, now especially the Percies and the Nevilles, throw in their lot with him; again the King is wanting at the crisis, and when he is found has lost all nerve and power to meet it; and again Bristol is the point aimed at by the invaders, and its capture marked by the shedding of noble blood."<sup>375</sup>

Henry reached Evesham on the same day on which York reached Berkeley. After an interchange of messages they met in the church of the castle (July 27), and before they separated, the doom of Richard was sealed.—"York commanded Sir Peter Courtenay who held the castle of Bristol for the King, to open its gates."—"York remained at Bristol; Henry, with his own forces, proceeded to Chester" (Aug. 8).<sup>376</sup>

Meanwhile, at the call of the Earl of Salisbury, on behalf of Richard, men of Wales and Cheshire had collected at Conway. But Richard appeared not; after waiting for him almost a fortnight the troops disbanded. At last (Aug. 5) the King arrived at Milford Haven with a considerable force, but on the second morning, when

<sup>373</sup> 4 Lingard's Engl., ch. 3, pp. 256, 258. In 1399, Richard II was at Westminster from April 1 until the 23d, when he went to Windsor. There he remained till the 25th, when he returned to Westminster. He stayed there until May 1. Then he left London on the

Irish expedition so fatal to him. Hardy's Close Rolls, pp. 57, 58, of Lond. edi. 1833.

<sup>374</sup> 4 Lingard's Engl., p. 358.

<sup>375</sup> 2 Stubbs's Const. Hist., ch. 16, p. 502.

<sup>376</sup> 4 Lingard's Engl., ch. 3, p. 260.

he arose, he observed from his window that the greater part had disappeared. To proceed to the army at Conway, was the advice of the Duke of Exeter; and his opinion prevailed. The royal party started at night-fall and reached Conway; where, to their disappointment, instead of a numerous force; they found only the Earl of Salisbury with a hundred men. In this emergency the King's two brothers (Exeter and Surrey), to ascertain Henry's intentions, visited him at Chester, and were admitted into his presence, but were not allowed to return. Henry's immediate object was to secure the King. The Earl of Northumberland was dispatched to Conway with instructions not to display his force. Placing it a few miles beyond Rhuddlan, he rode forward with only five attendants to Conway, and was readily admitted. Operated upon by the letter from Exeter which Northumberland brought, and by his assurances, Richard let Northumberland depart to make arrangements for an interview at Flint, and followed with his friends and their servants to the number of twenty-two. On the way Richard saw 'banners and pennons,' and found that Northumberland had betrayed him. They reached Flint in the evening. After a sleepless night the unfortunate king rose (August 19), and from the tower saw the army (of 80,000 men) 'winding along the beach till it reached the castle, and surrounded it from sea to sea.' With Archbishop Arundel, one of the three who first arrived, Richard held a long conversation: When they had departed he again mounted the tower and surveyed the host of his enemies. After the dinner which Northumberland had ordered, the King was summoned to receive Henry. Richard and the Earl of Salisbury (a companion in misfortune) were mounted on two poor animals, and the two followed Henry into Chester.<sup>377</sup>

Edmund de Stafford, Bishop of Exeter, held the office of Chancellor when Henry landed in Yorkshire, July 4, 1399; but, on August 13, Archbishop Arundel was again in possession of the Great Seal, and acting as Chancellor. *John de Scarle* (mentioned in § 26, p. 701,) was appointed afterwards. "Sir T. D. Hardy gives September 5, 1399, as the date of the first Privy Seal addressed to him, so that he

<sup>377</sup> 4 Lingard's Engl., ch. 3, p. 261 to 266.

held the office for twenty-five days of this unfortunate King's reign, being the whole of its nominal remainder."<sup>378</sup>

On the 19th of August the writs for a parliament, to be held on the 30th of September, were issued from Chester; the first writ being addressed to Arundel, as Archbishop, and attested by the King himself and the council."<sup>379</sup>

Richard was brought to London on the 2d of September, and placed in the Tower.

### 30. *The end of Richard's reign.*

In 23 Ric. II, "on Monday, the feast of St. Michael" (September 23, 1399), King Richard, then a prisoner in the Tower, was induced to execute an instrument of renunciation. Next day, in the Great Hall of Westminster, it was read and admitted. Then causes for deposing him were expressed in articles; and commissioners were appointed for giving sentence of deposition.<sup>380</sup> The part of Sir William Thirning now may be contrasted with what it was in 21 Ric. II. Then when Richard having a parliament ready to do his bidding, and the legal and judicial officers being called upon to state what they thought of the answers, for which their predecessors had been condemned, Chief Justice *Thirning* replied, that 'the declaration of treason, not yet declared, belonged to the parliament, but that had he been a lord of parliament, if he had been asked, he should have answered in the same manner.' Notwithstanding this opinion, Sir *William Thirning* was one of the persons who 'on Monday, the feast of St. Michael,' gathered in council in Westminster, and 'came to the presence of King Richard, being in the Tower;' and was one of those afterwards appointed commissioners for giving sentence of deposition, and deposing of the same King R.;" and, when they "came to the Tower to King Richard," was the spokesman for them all: "Sir *William Thurning* for and in the name of them all, pronounced the sentence of deposition and the words of resignation of

<sup>378</sup> Foss's Biogr. Jurid.

<sup>379</sup> 2 Stubbs's Const. Hist., ch. 16,

p. 502.

<sup>380</sup> Cotton's Abr., p. 385, *et seq.*

hômage and loyalty." In October this was shown in Westminster Hall.<sup>381</sup>

"Henry of Lancaster rose and stood forward: signing himself with the cross on his forehead and breast, he claimed in an English speech the kingdom of England and the Crown, as descended in the right line of descent from Henry III, and as sent by God to recover his right when 'the Realm was in point to be undone for default of governance and undoing of the good laws.' The whole assembly assented at once to the proposal that the Duke should reign over them. Archbishop Arundel led him by the right hand to the throne, and then (assisted by Scrope, Archbishop of York,) seated him upon it. Thus the revolution was accomplished."<sup>382</sup>

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## CHAPTER XXI.

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### REVIEW OF THE FOURTEENTH CENTURY.

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1. *Increased use of the English language; discussions in it before the people. In Ireland, parliaments as in England.*

Though natives of England may never have abandoned their vernacular tongue, yet "the court, the law and the nobility had disused it for a time.<sup>1</sup> Norman French triumphed in the first part of the reign of Edward III.<sup>2</sup> Soon afterwards there was a change of fashion.<sup>3</sup> The use of French in entries and enrollments may (as

<sup>381</sup> Cotton's Abr., p. 385 to 390, No. 10 to 61; 1 State Tr. 135 to 158; 4 Collyer's Engl., p. 205, *et seq.*, of ed. 1775; 2 Hume's Engl., p. 310, *et seq.*, of N. Y. ed. 1850; Hall. Mid. Ages, ch. 8, part 3, pp. 124, 125, of vol. 2, Phila. ed. 1824; 4 Lingard's Engl., ch. 3, p. 267, *et seq.*; Foss's Biogr. Jurid.; 2 Stubbs's Const. Hist., ch. 16, p. 503, *et seq.*

<sup>382</sup> *Id.*, p. 506.

<sup>1</sup> Turner's Engl., part 6, ch. 2, vol. 5, London ed. 1825, p. 374.

<sup>2</sup> In the beginning of that reign it was complained that children learned first the French, and from that the Latin language; and that there was no regular instruction of youth in English. Mr. Turner (*Ibid*) cites Holcot Lect. in Lib. Sap., l. 2; Higden Polyck., l. 1; Gales's xv Script. Angl., p. 216.

<sup>3</sup> Richard Rolle (or Rolle) "wrote many books," 3 Fuller's Worthies, ed. 1840, p. 403. Mr. Turner mentions that "Rolle, who died in 1349, intimates



mentioned in ch. 19, § 41, p. 607) have continued for a time, notwithstanding the act of 36 Edw. III, c. 15 (1362). But such use of French did not prevent its being superseded by English. "The reign of Edw. III was clearly the period of this revolution in our language, and it had become completely accomplished within nine years after that sovereign's death."<sup>4</sup> In the latter part of the reign of Edw. III, as well as in the reign of Ric. II, there were constant discussions before the people in their vernacular language.<sup>5</sup>

"Concerning the parliaments of Ireland," Lord Coke says :

"Where some have supposed that the same begin in 17 E. III, we shall make it appear by matter of record that not only King John, as all men agree, but H. II also, the father of King John," "did ordain and command, at the instance of the Irish, that such laws as he had in England should be of force and observed in Ireland: hereby Ireland being of itself a distinct dominion, and no part of the kingdom of England (as it directly appeareth by many authorities in Calvin's case) was to have parliaments holden there as England."<sup>6</sup>

2. *Fundamental principles of English government. Side of the clergy in the struggle between the nation and the crown. Principles of the party opposed to royal assumption.*

In England "the constitutional result of the three reigns that fill the fourteenth century is the growth of the House of Commons into its full share of political power; the recognition of its full right as the representative of the mass and body of the nation, and the vindication of its claim to exercise the powers which, in the preceding century, had been possessed by the baronage only. The barons of the thirteenth century had drawn the outline of the system by which parliament was to limit the autocracy of the King. Edward I had made his parliament the concentration of the three estates of his people; under Edward II, Edward III, and Richard II, the third estate claimed and won its place as the foremost of the three."<sup>7</sup>

that the generality of the laity understood no language but the English; and the English versifier of the romance of Arthur and Morlin asserts that he knew many nobles who were ignorant of French." Turner's Engl., part 6, ch. 2, vol. 5, Lond. ed. 1825, pp. 374, 375.

<sup>4</sup> *Id.*, p. 375.

<sup>5</sup> *Id.*, part 4, ch. 4, vol. 5, p. 150, *et seq.*

<sup>6</sup> 4 Inst., 349. Lord Coke says :

"Sometimes the King of England called his nobles of Ireland to come to his parliament of England, &c. And by special words, the parliament of England may bind the subjects of Ireland." *Id.*, p. 350.

<sup>7</sup> 2 Stubbs's Const. Hist., ch. 16, p. 306. Mr. Green says: "Under the first Edward, the parliament had vindicated its right to the controul of taxation; under

"The principles of constitutional growth, as enunciated by the party opposed to royal assumption, may be arranged under a small number of heads."—"That the King should 'live of his own,' supporting royal state and ordinary national administrative machinery out of ordinary revenue; that the laws should not be changed without the national consent; that the great charter should be kept inviolate and inviolable, not merely in the letter but as a pregnant source of rights and principles; that the king's ministers are accountable to the nation for their disposal of national contributions and for their general good behaviour; that grievances should be redressed before the money granted becomes payable; that the king should act by the counsel of his parliament, should not go to war, or attempt any great enterprise without its consent; and if he withdraw himself from its advice and influence, may be constrained to do his duty;—such were some of the fundamental convictions of the national party."<sup>8</sup>

"The struggle between royal prerogative and parliamentary authority does not work out its own issue in the fate of Richard II; the decision is taken for the moment on a side issue,—the wrongs of Henry of Lancaster; the judicial condemnation of Richard is a statement not of the actual causes of his deposition but of the offences by which such a measure was justified. Prematurely Richard had challenged the rights of the nation, and the victory of the nation was premature. The royal position was founded on assumptions that had not even prescription in their favour; the victory of the house of Lancaster was won by the maintenance of rights which were claimed rather than established. The growth of the commons, and of the parliament itself in that constitution, of which the commons were becoming the strongest part, must not be estimated by the rights which they had actually secured, but by those which they were strong enough to claim and wise enough to appreciate."<sup>9</sup>

the second, it had advanced from the removal of ministers to the deposition of a King; under the third, it gave its voice on questions of peace and war, controlled expenditure, and regulated the course of civil administration." Short Hist., ch. 6, § 1, p. 236. In 1376 "the action of the Commons showed none of their old timidity or self-distrust." Hist. of Engl. Peop., book 4, ch. 3, vol. 1, p. 466.

<sup>8</sup> Stubbs's Const. Hist., ch. 17, pp. 514, 515.

<sup>9</sup> *Id.*, ch. 17, p. 620. In a volume embracing a subsequent period is this passage: "Although, as we have seen, the deposition of Richard II and the acces-

sion of Henry IV were not the pure and legitimate result of a series of constitutional workings, there were many reasons for regarding the revolution of which they were a part as only slightly premature; the constitutional forces appeared ripe, although the particular occasion of their exertion was to a certain extent accidental, and to a certain extent the result of private rather than public causes. Richard's tyranny deserved deposition had there been no Henry to revenge a private wrong. Henry's qualifications for sovereign power were adequate, even if he had not had a great injury to avenge and a great cause to defend." *Id.*, ch. 18, vol. 3, p. 6.

Although in this century there may be in some respects decline and retrogression, yet in the quarrels between the crown and the papacy, and between the nation and the crown, the English clergy for the most part took the right side.

"Archbishops Stratford and Arundel scarcely ever claim entire sympathy, but they gained no small advantages to the nation, and few kings had better ministers or more honest advisers than William of Wykeham."<sup>10</sup>

3. *Presentation of gravamina; redress of grievances, the condition of a grant. How the commons thus kept under review the general administration of justice, and endeavoured to meet abuses prevalent in its administration. Power given the chancellor to survey the courts, and put fit in place of unfit officers. Precautions to prevent bad appointments.*

"The presentation of gravamina was made an invariable preliminary to the discussion of a grant, the redress of grievances was the condition of the grant; and the actual remedy, the execution of the conditions, the fulfilment of the promises, the actual delivery of the purchased right, became the point on which the crisis of constitutional progress turned."<sup>11</sup>

"A comparison of the Rolls of Parliament with the Statute Book proves that the great bulk of the new laws were initiated by the estates and chiefly by the commons. Hence the importance of the right of petition and of freedom of speech in the declaration of gravamina, asserted by the invaluable precedents of 1301 and 1309. As the petitions of the commons were urged in connection with the discussion of money grants, it was very difficult to refuse them peremptorily without losing the chance of a grant."<sup>12</sup>

Lord Coke mentions 39 E. III, 14, where a judgment was "reversed before the council of state; it was held utterly void, for that it was not a place where judgment may be reversed."<sup>13</sup>

"The commons, although not pretending to be a court of justice, attempted to keep under review the general administration of justice, and to compel the king to observe the promises of the coronation oath and the emphatic declaration of the great charter. No words of that famous document were better known or more frequently brought forward than the fortieth clause,<sup>14</sup> *nulli vendemus, nulli negabimus*

<sup>10</sup> *Id.*, ch. 15, vol. 2, p. 303.

<sup>11</sup> 2 Stubbs's Const. Hist., ch. 17, p. 570.

<sup>12</sup> *Id.*, p. 573.

<sup>13</sup> 12 Rep., 64.

<sup>14</sup> See ch. 15, § 11, pp. 297, 298.

*aut differemus rectum et justitiam;* and none probably were more necessarily pressed on the unwilling ear of the dishonest or negligent administrator. The frequent petitions of the commons on this point show the *prevalence of the abuses and the determination of the nation not to rest until they were abated.*"<sup>15</sup>

"It would be vain to attempt, even by giving single examples, to illustrate all the plans suggested by the indefatigable Commons to meet the abuses prevalent in the administration of justice."—"Justice was delayed, not only in compliance with royal writ, contrary to the charter, but by the solicitations of great men, lords and ladies who maintained the causes not merely of their own *bona fide* dependents, but of all who were rich enough to make it worth their while."<sup>16</sup>

Mr. Foss, who says as to Sir *John Cary*, 'there is no proof of his ever having acted as an advocate,'<sup>17</sup> observes that, "according to the practice of that period, neither the chief nor the puisne barons of the Exchequer, were necessarily selected from the serjeants or pleaders, nor indeed otherwise connected with the law than as officers of that particular department."<sup>18</sup>

Within a fortnight after the appointment of Sir *John Cary*, in 10 Ric. II (1386), the parliament passed the ordinance (mentioned in ch. 20, § 16, p. 674) placing the government of the kingdom under eleven commissioners, and in effect depriving not only the king's favorites, but the king himself, of executive power. In efforts to regain ascendancy the plan was adopted of obtaining from judges, in 1387, a declaration that the ordinance was illegal. Chief Baron *Cary* was one of those who joined in that declaration; and (as stated in ch. 20, § 17 and § 18, p. 677, and p. 679) was included in the impeachment, and was sentenced, together with justices of the King's Bench and Common Pleas. During the same session of parliament, to-wit: in 11 Ric. II, "petitions of the Commons, with their answers,"<sup>19</sup> embrace, or are followed, by this:

"It is enacted that the Chancellor and Keeper of the Privy Seal shall have *power to survey* the courts of the Chancery, *both benches, the Exchequer* and the receipts, *to remove such officers as therein be not fit, and others to place in the same.*"<sup>20</sup>

<sup>15</sup> 2 Stubbs's Const. Hist., ch. 17, p. 605.

<sup>16</sup> *Id.*, ch. 17, p. 608.

<sup>17</sup> See ch. 20, § 16, p. 673, *note*.

<sup>18</sup> Biogr. Jurid.

<sup>19</sup> In Cotton's Abr., p. 323, *et seq.*

<sup>20</sup> *Id.*, No. 41.

The second chapter of stat. 12 Ric. II, is as follows:

"That the Chancellor, Treasurer, Keeper of the Privy Seal, Steward of the King's House, the King's Chamberlain, Clerk of the Rolls, the Justices of the one bench and of the other, Barons of the Exchequer, and all other that shall be called to ordain, name or make justices of peace, sheriffs, escheators, customers, comptrollers or any other officer or minister of the King, shall be firmly sworn that they shall not ordain, name or make justice of the peace, sheriff, escheator, customer, comptroller, nor other officer or minister of the King, for any gift or brocage, favour or affection; nor that none which pursueth by him or other, privily or openly, to be in any manner office, shall be put in the same office or in any other; but that they make all such officers and ministers of the best and most lawful men, and sufficient to their estimation and knowledge."<sup>21</sup>

4. *Inns of court; where students of law were boarded and taught.  
Also of Westminster Hall.*

In the beginning of the reign of Edward II, Henry Lacy, earl of Lincoln, became possessed of the premises afterwards called *Lincoln's Inn*.

"Tradition says" "that this Earl of Lincoln, being a person well affected to the laws, first induced the students of that honorable profession to settle in this spot."—Those in whose possession it remained granted leases to the students in the law, reserving to themselves certain rent and lodgings on their coming to London.<sup>22</sup>

*Thavie's Inn* took its name from John Tavie, or Davy. It had students of the law resident there as far back as Edward III. In time the premises came to Gregory Neckolls, who, by deed dated 4 Jan., 4 Edw. VI, granted it to the then benchers of Lincoln's Inn; it was afterwards demised by them to the principal and fellows of this Inn for the rent of £ 3. 6s. 8d. *per annum*.<sup>23</sup>

After proceedings against the Templars, in the reign of Edward II, their property in England having devolved on the Crown, the King granted *the Temple* to the Knights Templars (or Knights Hospitallers) in England.

In the 14th century "they demised these premises, for a rent of

<sup>21</sup> 2 Stat. of the Realm, 55.

<sup>23</sup> *Id.*, pp. 171, 172.

<sup>22</sup> Ireland's Inns of Court, p. 132.

£ 10 *per annum*, to divers professors of the common law that came from Thavie's Inn."

Although in the reign of Richard II much was done by Wat Tyler and his followers to injure and destroy books and records of the Temple, yet students increased rapidly, and the lawyers (divided into two bodies, the one known by the name of the Society of the *Inner*, the other of the *Middle Temple*) have kept possession of the Temple ever since.<sup>24</sup>

"After the death of Robert de Clifford, Isabella, his widow, demised" *Clifford's Inn*, in 18 Edw. III, "to the students of the law (*apprenticiis de banco*)", for the yearly rent of £ 10, so that since that "period, first by lease, and afterwards by a grant in fee ferm," it has "continued a receptacle for gentlemen of the law, and been stiled an Inn of Chancery."<sup>25</sup>

"In 1397, in the reign of Richard II," Westminster Hall "underwent so thorough a repair that it may not be improperly said to have been rebuilt; for, 'the walls, windows and roof were taken down and new made, with a stately porch, and divers lodgings of a marvellous work, and with great costs.'"<sup>26</sup>

Stowe tells us of the upper end of this hall:

"There was anciently a marble stone, of twelve feet in length and three in breadth; and also a marble chair, where the kings of England formerly sat at their dinners; and at other solemn times the Lord Chancellor. At this marble stone divers matters of consequence used to be transacted."

There, or in rooms on the north side of the grand old hall, the courts of Chancery and King's Bench, and some other courts have held their terms during many years.<sup>27</sup>

<sup>24</sup> The grant of Aug. 13, in 6 Jac. I, is mentioned in Ireland's *Inns of Court*, edi. 1800, p. 39; Penny Magazine for 1832, p. 116.

<sup>25</sup> Ireland's *Inns of Court*, sect. 3, p. 80; 2 Reeve's *Hist. of Eng. Law*, ch. 16, edi. 1869, p. 440.

<sup>26</sup> Ireland's *Inns of Court*, sect. 17,

p. 245. Of the festival, on completing the repairs of the hall in 1399, there is an account in *Id.*, pp. 247, 248.

<sup>27</sup> *Id.*, p. 231, and p. 243. Other places of session have, at times, been provided for some, and may hereafter be provided for all of the courts.

5. *Use of the Imperial or Civil law in the reign of Edw. II. Its study less cultivated afterwards. Whether in the reign of Ric. II it was prohibited from being cited in common law tribunals. Conclusion of the Lords that the realm is not governed by the civil law.*

In the law annals of King Edward the second, words of the imperial or civil law, are, in debating cases in court before the judges, quoted; sometimes with an admission that the matter depends on the authority of that law. Particular instances of its authority, and the manner in which then it was, or should have been, applied, are given in John Selden's dissertation.<sup>28</sup> One use of it prevailed in Episcopal Consistories, and continued down to Selden's time, and indeed 'to our own time.'

"For instance, in testamentary causes, succession with regard to the movable chattels of one dying intestate, institutions and substitutions to the goods of such persons, and in some other particular cases, the cognizance whereof, by permission of the laws of England, belongs to those consistories."<sup>29</sup>

Further, Selden says, "As to what relates to the King's courts, as usually contradistinguished from the ecclesiastical consistories, the use of the imperial law, as handed down to us from former ages, is to this day retained in" "the Marine, or Court of Admiralty, and in the Court of Chivalry, or that of the Constable and Marshal of England, consequently in the Court of Delegates, as also in the cognizance of some extraordinary marine and military affairs of a civil nature."<sup>30</sup>

Wherefore those who have asserted that the English make no use of the Roman law, are mistaken.

"The same may be said concerning the use" "made of the Imperial law and of the interpreters of it, in treaties and engagements to be entered into with foreign princes, as well as in the explanation of them, and in the matter of embassies."<sup>31</sup>

That the study of the Imperial law was, in the latter part of the reign of Edward the second, or the early part of the reign of Edward the third, cultivated less than it had been, Selden considers, is indicated in the case of the Abbot of Torre, debated about the middle

<sup>28</sup> Annexed to Fleta in 1647; ch. 8, § 3, p. 211 to 218, of Kelham's translation in 1771.

<sup>29</sup> *Id.*, § 4, pp. 218, 219.

<sup>30</sup> *Id.*, p. 220.

<sup>31</sup> *Id.*, p. 221.

of the reign of Edward the third, when Skipwith, a celebrated lawyer, acknowledged himself ignorant of the meaning of terms with which one who had applied himself to the study of the imperial law could not be supposed unacquainted.<sup>32</sup> That there was less recourse to the Roman law in the civil tribunals in the time of Richard II than there had been before, is also Mr. Spence's view.<sup>33</sup> Indeed he goes so far as to state that in this reign "the judges prohibited it from being any longer cited in the common law tribunals."<sup>34</sup> For this statement Mr. Stubbs cites prominently 'Rot. Parl., 11 Ric. II. What is quoted in ch. 20, § 18, p. 678, from the proceedings of parliament in 11 Ric. II, shows that in that year "the justices, serjeants and other sages of the law, *both of the realm and law civil*," were charged to give 'their faithful advice'; that the lords considered the particular cause could not "be tried elsewhere but in parliament, nor by any other law or court except that of parliament"; that it belongs to the lords 'to be judges in such cases'; and they conclude 'thus it shall be done in this case,' 'because the realm of England is not nor ever was (neither is it the intent of the king and lords of parliament that it shall ever be) ruled and governed by the civil law.'<sup>35</sup>

6. *In England, though the realm is governed by the common law, yet the rules of the civil law are often applied.*

Such use of the Imperial law as prevailed from the end of Ste-

<sup>32</sup> *Id.*, § 5, p. 223; there being in the margin a reference to Mich. 22 Edw. III, p. 14, pl. 37.

<sup>33</sup> 1 Spence's Eq., book 2, ch. 2, vol. 1, p. 109. Yet in the 19th century, Charles Butler, Esq., of Lincoln's Inn, used this language: "The study of the civil law has been encouraged in this country; in each of our universities there is a professor of civil law, and by general custom and immemorial usage, some of the institutions of the civil law have been received into our national law. In the spiritual courts, in the courts of both the universities, the military courts, and courts of admiralty, the rules of civil law

and its form of legal proceeding greatly prevail." *Horæ Juridicæ Subsecivæ* vii, p. 72.

<sup>34</sup> He uses this language: "In the reign of Richard II, the barons protested that they would never suffer the kingdom to be governed by the Roman law, and *the judges prohibited it from being any longer cited in the common law tribunals*. 1 Spence's Eq., pp. 346, 347.

<sup>35</sup> This does *not* support the language of Mr. Spence (quoted in the last note), and is consistent with the view presented in ch. 1, § 11, p. 28 to 31; and in the next section of this chapter.



phen's reign until some part of that of Edward III, produced no change in what we call Civil Government. The English nation, and the judges were, even during that period, tenacious of the customs of their own country, to-wit: of the common law of England. In the public entries of the declarations, exceptions, agreements, judgments and other civil affairs, transacted during that period, scarce any other footsteps of the imperial law as it was at that time admitted in England, can be traced than what are to be met with in such like public records of succeeding ages.

"Civilians and canonists, whenever any question arose in the discussion of actions instituted according to the *English* law, and which was brought upon the tapis, to be determined suitable to the rules either of the civil or canon law (such as questions concerning marriages, wills or other matters, naturally belonging to the courts or consistories), in which the imperial and pontifical law are in a few things allowed of, were in the ages before spoken of, as well as in the following, applied to and heard even in those courts, which, upon other occasions, made use of the *English* law. But our courts made no other use of such lawyers or of the law they practise than they do of grammarians, physicians and such like, whenever a question happens to arise between contending parties, the decision whereof depends on the knowledge of their arts."<sup>36</sup>

Selden considers there is good reason to believe, that from the reign of Henry the second down to that of Edward the second, those at the helm in England "had the very sentiments which King Richard the second and his nobles manifested in parliament."<sup>37</sup> During that period, as well as after, both in the oaths taken by the kings at their coronation, and in the laws enacted by them, there are express words showing that the imperial law, however now and then applied, "was, in matters of public government, of no manner of authority" in England.<sup>38</sup>

Then, about the same time that such use as had been of the imperial law ceased or was greatly lessened, an end was likewise put to another custom, "to-wit: that of appointing bishops, abbots, deans

<sup>36</sup> *Dissertatio ad Fletam* was annexed to *Fleta* in 1647, and is p. 1034 to 1120 of *Seldeni opera*, vol. 2, Tom. 2, edi. 1726. What is in the text is from ch. 9,

§ 1, p. 228 to 232, of Kelham's translation in 1771; and *Id.*, § 2, p. 233 to 241.

<sup>37</sup> *Id.*, p. 240. <sup>38</sup> *Id.*, § 3, p. 246.

and such like persons of the Hierarchical order, to be the King's judges."

"From that time scarce any, or none indeed of that order, the most eminent part of which usually applied themselves in the universities to the study of the Imperial and Pontifical laws, sat in England as judges in the aforesaid courts (except in that of the chancery) yet the officers of those courts, and others considerable in the management of public affairs, were usually, even then, and for a long while after, chosen out of that order."<sup>39</sup>

7. *Connection between Parliament and the Chancery. In the Chancery officers known as the six clerks; and others known as the twelve clerks; these twelve being called Masters in Chancery. In what respects the premier Master—the Master of the Rolls—is or is not distinguishable from the other eleven.*

According to the author<sup>40</sup> of the 'Constitution of Parliaments,'<sup>41</sup> and of *Fleta Minor*,<sup>42</sup> the Lord Chancellor, when the King's warrant to issue out writs for parliament is sent to him, sends it or another warrant to the Master of the Rolls, who, as chief clerk of the *Betty-bag*, causes the other clerks of the office to engross the writs.<sup>43</sup>

Parliament is "summoned by writs out of the chancery"; the acts made are enrolled and kept in chancery; all commandments of that court are expedited, either by writs out of the chancery, or by the chancellor's serjeants-at-arms: the Lord Chancellor is ever speaker of" the higher "house, without further choice or appointment as is used about the speaker of the lower house, and ought, without any writ, to attend there"—; "and the clerk of the parliament hath his fee out of the hanaper as an officer of the chancery."<sup>44</sup>

<sup>39</sup> *Id.*, pp. 246, 247. "On which account, perhaps, the officers of the same courts, and others of that kind, none of which, for some ages, have been Ecclesiastics, are still styled *Clerks*." *Id.*, p. 247; 1 Bl. Com., 17.

<sup>40</sup> Sir *John Pettus*, of Cheston-hall, in Suffolk, was member of parliament for Dunwick, in that county, in the reign of Charles II. He was the author of '*Fodina Regales*.' Lond., 1670, folio; of 'England's Independency on the

Papal power.' Lond., 1674, 4to; and *Volatiles* from the history of Adam and Eve,' printed at London the same year.

<sup>41</sup> Granger's *Biogr. Hist.*, class 9, p. 91.

<sup>42</sup> Lond. 1680, 8vo. *Id.*

<sup>43</sup> He gave it the title of '*Fleta Minor*,' because he translated it in the Fleet. *Id.*

<sup>44</sup> Legal *Judic. in Ch.*, edi. 1727, ch. 4, p. 115.

<sup>45</sup> Hargrave's *Law Tracts*, pp. 308, 309.

"In the old orders of the Chancery, it is found that these necessary officers and ministers have been admitted to write to the Seal, viz: the clerk of the Crown, the Prothonotary, the twelve masters, in which number the Master of the Rolls is one and the Prothonotary is another."<sup>45</sup>

"On the law-side of the court" the Masters "made out patents, commissions and writs, and by themselves, and clerks were writers to the Great Seal, each Master being allowed to have *three* clerks writing under him, and, in his name, to the Great Seal, which, as to the Master of the Rolls, were increased to *six* by the '*Orationes Cancellariæ Dom., Regis,*' made 12 R. II."<sup>46</sup>

The Master of the Rolls is mentioned "as one of those who *plied* writs to the Great Seal, *i. e.*, examined them, and *plied* or *folded* them up to be ready for the Great Seal, to be put to them."<sup>47</sup>

It is said by Lord *Coke* that "the Master of the Rolls hath in *jure officii* the gift of the offices of six clerks in the chancery";<sup>48</sup> and by Lord *Loughborough*, that "the six clerks appear to have been *from the highest antiquity* the sworn officers of the Great Seal, and likewise of the Court of Chancery"; that "they were, with regard to the other clerks that came afterwards, *the only officers upon the establishment of the court.*"<sup>49</sup> Wherein this language is inaccurate may be seen by comparing it with what precedes and follows it in this section.

The office of Master of the Chancery in ordinary is of very ancient institution."<sup>50</sup>

"Ancient kings of" England "seem to have disposed of the court of chancery in such sort as that the chancellor should be the magistrate thereof and the twelve *clerks* of the first form should assist him

<sup>45</sup> Mr. Croke's MS. is cited in Legal Judic. in Ch., ed. 1727, ch. 4, p. 116, and ch. 5, p. 222.

<sup>46</sup> *Id.*, p. 72, and p. 77. The work by Geo. Wms. Sanders, Esq., published in 1845 at London, entitled "Orders of the High Court of Chancery and Statutes of the Realm, relating to chancery from the earliest period," embraces (p. 1 to 7 a) "*Ordinaciones cancellarie domini regis*

*facte anno xii regis Ricardi secundi.*" They are also noticed in *Id.*, p. 135, in a decree of Feb. 23, in 19 Jac. I (162½), by the Lord Keeper *Williams*.

<sup>47</sup> Legal Judic. in Ch., p. 117.

<sup>48</sup> 4 Inst., 97.

<sup>49</sup> Six Clerks, 3 Ves., 598; *Barker v. Dacre*, 6 *Id.*, 687.

<sup>50</sup> Preamble to act of 13 Car. 2; cited in 1 Madd. Ch., p. 3, note b.

as his council.”—“In the very form of the creation, namely, in the putting on of a cap, there is a representation of antiquity and mastership, not unlike the usage amongst the Romans, when men were made citizens of Rome.”<sup>51</sup>

“*Magistri Cancellariæ* they are called”;<sup>52</sup>—“it seemeth that the other *clarkes* of the chancery were under the masters as scholars were under their teachers. *Concilium regis in cancellariâ* they are called 1 Ric. II.”<sup>53</sup>—“*Socii* and *collaterales* they are termed b Fléta.”<sup>54</sup>

“*Clerici de majore gradu* they are called” in some patents,<sup>55</sup> “*Nostri clerici ad robas* they are called 24 E. III, 13, in the Year-books wherein it is said that the king called unto him his chancellor, treasurer, his justices and his *clarkes* of robes in chancery, to know their opinions concerning a suspicious deed of release. The reason of which name grew from this, that they wore robes or gowns of the King’s gift by the chancellor’s delivery, as appeareth 21 E. III. *Claus. pa. 1*, in a writ directed to Richard Thoresby, keeper of the hanaper, to allow the bishop of Worcester, then chancellor, £4 and 20d., that he had laid out above the King’s allowance upon the robes by him delivered to the *clarkes* of the chancery, for that service, *propter caristam panni et sendalli*.”<sup>56</sup>

Touching the number, it appeareth in 49 E. III, in Henrie Codrington’s patent, that it hath been twelve; for there it is said, *concessimus quod sit unus de duodecim magistrorum cancellariæ nostræ in supplementum dicti numen magistrorum, unde unus deficit, &c.*<sup>57</sup>

<sup>51</sup> Hargrave’s Law Tracts, p. 294; being the tract mentioned in ch. 34, § 5.

<sup>52</sup> 51 E. III, and 9 E. IV. *Id.*, p. 295.

<sup>53</sup> “Where it appeareth, they granted a protection to one Nicholas Clarke; and 9 Ric. II, where Bertran de Bullingbrooke is summoned to be coram nobisc. et consilio nostro in cancellariâ nostrâ. And in like sort Walt. Osborne was to be attached by the shrieve of Lancaster ita quod cum habeas coram nobis et consilio nostro in cancellariâ nostrâ; and 3 E. II, where it is said this writ was made by the common counsel of the chancery according to the statute of Westminster ne conquerentes recedant à

cancellariâ sine remedio; and in their oath there are these formal words, *loyallment counsellors le roy quand seront requisite. Id.*, p. 295.

<sup>54</sup> Lib. 2, c. 13. “*Collaterales*, as it should seem, because they sate by his side at a certain table in Westminster Hall, and in other places.” (*Id.*, p. 295); as is also proved by the record in 51 E. III.

<sup>55</sup> Hargrave’s Law Tracts, p. 296.

<sup>56</sup> *Id.*, p. 297. “The Year Book of 24 E. III, 35 a,” is cited in Legal Judic. in Ch., edi. 1727, ch. 3, p. 69.

<sup>57</sup> Hargrave’s Law Tracts, p. 297.

A writer of the Chancery, brought into England out of France, said:

"There are two sorts of the Masters of the requests; the one *del hostel*, who have the same office that our masters of requests have here in England; the other *du palais*, who assist the chancellor of France in the French chancery, as our masters of the chancery assist the chancellor of England in the English chancery. This the Frenchmen seem to have drawn from the court of Rome as where ceremonies are most exactly observed, and where they have a special master of them and where they have also two sorts of masters of requests, the one *signatura gratiæ*, and the other *signatura justitiæ*; the first sort of registers consisting upon favour, the King reserveth to himself. The second, which requireth care and industry, and is not so plausible, he leaveth to his officer, the chancellor, under whom the masters were wont to expedite the same; for proof whereof 21 E. III, 47, it appeareth plainly that all petitions of right ought to be directed by their endorsement to the chancellor, and to none other, and to be determined by the chancellor and counsel of that

\_\_\_\_\_,"<sup>58</sup>

The same writer having referred to what is touched in the patent of 18 E. III, said:

"Some of the Masters, named Commanders, should consider of the proper writ or commission fit to try and redress every particular grief or wrong which is complained of, and direct the cursitors and other inferior clerks to make them; and others again, termed examiners, when they are so made, should examine them, *in ratione, dictione, et sillabis, et litera*, before they be put into the seal. And heretofore when doubts did arise upon writs sent out of the chancery, or to be formed and composed there, not only the king's justices were wont to send to confer with the masters concerning the same; but the king himself hath sometimes, together with his chancellor, treasurer and justices, called also his *clericos at robas* to consult about such causes."<sup>59</sup>

"The writs of the chancery are of three sorts; some of course, as originally returnable in other courts; some of grace, as *subpœna supplicavit, certiorari, ne exeat regnum*, injunctions, commissions; and some other of form as *diem clausum extremum, mandamus quæ plura, scire facias, elegit, &c.*"<sup>60</sup>

Crompton<sup>61</sup> is cited for the position "that the Master of the Rolls is assistant to the Chancellor for matters of common law, and in his

<sup>58</sup> *Id.*, p. 297.

<sup>59</sup> *Id.*, p. 301.

<sup>60</sup> *Id.*, p. 301.

<sup>61</sup> Richard Crompton wrote "L' autho-

ritie et jurisdiction des Courts de la Majestie de la Roynie. Lond., 1594, 1637, 4to." Allibone's Dict.

absence to hear causes and give orders."<sup>62</sup> He is followed by Sir *Edward Coke*, who says of the Master of the Rolls, that "in the absence of the Lord Chancellor he heareth causes' and giveth orders."<sup>63</sup> Lord *Nottingham* cites Coke's words; but this," saith he, "is not *virtute officii*, but by special commission."<sup>64</sup> To which the author of *Legal Judicature in Chancery* adds:

"Besides supposing that at that time there was not any special commission then subsisting, yet the Master of the Rolls might do it by delegation or appointment from the Chancellor, either by general or particular references."<sup>65</sup>

Sir *Robert Cotton* in citing from Crompton the passage above mentioned, introduces *Sedente Curia*; saying

"That the Master of the Rolls is an assistant unto the Chancellor for matters of the common law; and also '*Sedente Curia*, i. e., sitting the court, in the chancellor's absence, he doth hear causes and orders in matters of equity."<sup>66</sup>

Thereupon the author of *Legal Judicature in Chancery* makes this observation:

"Sitting the court, i. e., the Court of Chancery, where the Chancellor usually sits, not the Rolls, where the Chancellor never comes. And taking this to be the meaning of Crompton, the hearing of causes in court might very probably be by delegation."—"The chancellor, leaving the Master of the Rolls to continue the business of the court after he was gone, was an implied delegation, as also his subsequent confirmation of what the Master of the Rolls did in court during his absence."<sup>67</sup>

<sup>62</sup> Jurisdict. of Courts, 41 b, is cited in *Legal Judic. in Ch.*, edi. 1727, ch. 4, p. 166.

<sup>63</sup> 4 Inst., 97.

<sup>64</sup> MS., *de officio Magistri Rotulorum*, is cited in *Legal Judic. in Ch.*, edi. 1727, ch. 4, pp. 166, 167, and pp. 173, 176.

<sup>65</sup> *Id.*, p. 167.

<sup>66</sup> Crompton's Courts, 41 b, and Sir *Robert Cotton's* MS. treatise of the Court of Chancery, are cited in ch. 4, p. 167, of *Legal Judic. in Ch.*, edi. 1727.

<sup>67</sup> *Id.*, pp. 167, 168. To his preceding sentence Sir *Robert Cotton* sub-

joins: "But I do not conceive by what authority the Master of the Rolls doth set and determine causes in the chapel of the Rolls, as of late years hath been used, unless peradventure he hath been authorized thereunto by a special commission under the Great Seal." *Id.*, p. 168. On a subsequent page it is mentioned as "the common received opinion that the authority of the Master of the Rolls, to hear causes at the Rolls, was by the King's commission; and it is stated "that there is a clause in those commissions, that all the decrees made under

The conclusion of the author of 'Legal Judicature in Chancery' is

"That the Master of the Rolls is no Judge, either in Law or Equity, in the Court of Chancery; but whatever judicial power he hath lawfully exercised, hath been either as one of the twelve Masters in Chancery, or by virtue of the King's commission."<sup>68</sup>

That author did not regard the twelve masters as subordinate *judges* in the court of chancery. As to *eleven* he considered

"That they are still but eleven officers of the court, tho' of a superior rank, and that whatever judicial authority they exercise, it is like the ministerial officers in all other courts, by communication of authority from the judge of the court, in aid and ease of him and subject to his review and controul."

And he considered that in this respect, the other Master—the Master of the Rolls—is not distinguishable from them.

"He is indeed the *primier* or *first* Master, but still he is but a Master, and hath not lawfully exercised any judicial power in the Court of Chancery but as one of the Masters, except where he received his authority by the King's commission."<sup>69</sup>

Speaking of such license as is mentioned in ch. 20, § 26 (in note on p. 20) to have been granted *John Waltham*, he says:

"Can any man think that by virtue of this license, *John Waltham*, as often as he had occasion or a mind to be absent, could make or unmake a judge in the highest court.. This power he must have had if the Master of the Roll's office were a *judicial* office; but this evidently shews that it was only a *ministerial* office; and accordingly, in fact when Mr. Lambard<sup>70</sup> was deputy, he did no other than ministerial acts by virtue of such deputation. It is a most convincing proof that the office of the Master of the Rolls is only ministerial, because he may make a *deputy*, which a judicial officer cannot, and because such deputy hath never done any other than ministerial acts."<sup>71</sup>

them must be made by *three* of the commissioners at least, whereof the Master of the Rolls, or one of the judges, must be one, and are to be *subscribed by three*, and that none of those decrees shall be enrolled unless the chancellor first signs them." *Id.*, p. 181.

<sup>68</sup> *Id.*, p. 185.

<sup>69</sup> Legal Judic. in Ch., edi. 1727, ch. 3, p. 94.

<sup>70</sup> In 1597, was a deputation by the Lord Ellesmere to Mr. Lambard. *Id.*, p. 105.

<sup>71</sup> *Id.*, p. 107.

8. *Ancient jurisdiction of the Admiralty. Whence was derived the system of pleading and procedure in the Court of Admiralty; and in the ecclesiastical courts. Whence came the procedure in equity.*

"The jurisdiction of the admiralty is more ancient than Mr. Lambert, in his *Jurisdiction of Courts*, doth affirm."<sup>72</sup>

The sea-coasts of England were anciently divided into several vice-admiralties, viz: 1. Northumberland, Durham and York; 2. Lincoln; 3. Norfolk; 4. Suffolk; 5. Essex; 6. Kent; 7. Sussex; 8. Southampton; 9. Dorset; 10. Devon; 11. South Cornwall; 12. North Cornwall; 13. Somerset; 14. Gloucester; 15. South Wales; 16. North Wales; 17. Chester; 18. Lancaster; 19. Westmoreland and Cumberland. Each of these places (the port of London being immediately under the admiralty court, as to the matter) had a particular vice-admiral, who had power to hold a session once in the year, or oftener, if occasion required."<sup>73</sup>

"In the ecclesiastical courts"<sup>74</sup> "the influence of the civil is overpowered by that of the canon law; and in courts of equity, its directions, though useful, are by no means predominant; but the court of admiralty (as the greatest of modern judges, Lord *Hardwicke*, has observed) proceeds entirely by the rules of the civil law, except in cases omitted."

This is the language (in 1802) of Dr. Arthur Browne, Professor of Civil Law in the University of Dublin.<sup>75</sup> In the United States, interesting observations, as to pleading and procedure, have recently been made by the "Dane Professor of Law in Harvard University." Professor Langdell says:

"The system of pleading, which has prevailed in courts of equity, was derived partly from the common-law system, and partly from

<sup>72</sup> 12 Rep., 79.

<sup>73</sup> It is stated that maritime laws and ordinances, registered in the ancient authentic black book of the admiralty, shew the method used several hundred years before 1690; the year of publication of the pamphlet reprinted in 9 Harl. Miscel., ed. 1810, p. 466. Yet "the chancery had admiral jurisdiction by the statute of 31 H. VI." See *post* in ch. 24, § 22. In the 16th century it was observed that "many things now dis-

patched in the admiralty were, in old time, in a more due course done in the chancery." Hargrave's *Law Tracts*, p. 306; also pp. 311, 312.

<sup>74</sup> The "influence of the ecclesiastical system upon local tribunals and their officers, and the forms and modes of proceeding," is mentioned in ch. 14, § 9, pp. 274, 275.

<sup>75</sup> 2 Browne's *Civil Law*, ed. 1802, pp. 348, 349.



that of the civil law, as administered in the English ecclesiastical courts; though much more from the latter than the former.”<sup>76</sup>

The procedure in the ecclesiastical courts is called the civil-law system, not because it ever prevailed among the ancient Romans, but because it has grown out of the latest Roman procedure, and because it prevails generally in those counties and jurisdictions which derive their procedure from the Romans.” From the revival of learning, in the twelfth century, “we have abundant information in the writings of civilians and canonists, and in the legislation contained in the ‘Corpus Juris Canonici.’ The earliest of these writings exhibit the system in full operation.”—“As thus exhibited, the system is characterized by two striking features, of which there is no trace in the Roman procedure, and which clearly originated after the time of Justinian. They relate to the mode of proof; and they consist, first, in requiring each party to a suit to submit to an examination under oath by his adversary, his answers being evidence against him as admissions or confessions, but not in his favour; secondly, in requiring all the witnesses in a cause to be examined before the trial, and in secret, their testimony being reduced to writing by the examiner in the form of depositions, and kept secret until all the witnesses had been examined on both sides.”<sup>77</sup>

As to ‘the change from oral to written evidence, and the changes connected with it, and consequent upon it,’ Mr. Langdell says:

“It seems pretty clear” “that they were of recent introduction in the twelfth century, if indeed they were introduced before the thirteenth century, and that they originated with the canonists, having been first introduced into the spiritual courts. During the twelfth and thirteenth centuries the canonists paid great attention to the subject of procedure, in that respect taking the lead of the civilians proper.”—“There is little doubt that, during” this “period, the civil-law procedure was moulded into the shape that it has ever since retained, and that it was mainly done by the canonists.”<sup>78</sup>

In directing attention to this procedure, Mr. Langdell claims “that the procedure in equity has been derived wholly from that source, so far as it is of civil-law origin.”<sup>79</sup> He considers there were defects in the common law procedure which could be “effectually remedied in only one way—namely, by adopting a procedure founded upon the principle of compelling litigants to do whatever the chancellor decided that by law they ought to do,” and that “such a system was furnished by the ecclesiastical courts.”<sup>80</sup>

<sup>76</sup> Summary of Equity Pleading, p. iii.

<sup>77</sup> *Id.*, pp. iii and iv.

<sup>78</sup> Summary of Eq. Pl., pp. xii and xiii.

<sup>79</sup> *Id.*, p. xiv.

<sup>80</sup> *Id.*, p. xxiii.

9. *Of Scire facias to repeal letters patent; and other cases within the Chancellor's ordinary jurisdiction as distinguished from a court of equity. Of proceedings in Chancery in the reign of Edw. II and early part of Edw. III. How the Chancellor's equitable jurisdiction grew up. Where and in whose presence he sat in 1345.*

The Chancellor by his ordinary power may hold plea of *scire fac.* to repeal the King's letters patent under the Great Seal, being always enrolled in this court." This writ "doth lie in this ordinary course of justice in three cases:" 1. When the King by his letters patents doth grant by several letters patents one and the self same thing to several persons, the former patentee shall have a *scire fac.* to repeal the second patent;" 2. "When the King granteth anything that is grantable upon a false suggestion, the King by his prerogative *jure regio* may have a *scire fac.* to repeal his own grant;" 3. "When the King doth grant any thing which by law he cannot grant, he *jure regio* (for advancement of justice and right) may have a *scire fac.* to repeal his own letters patents. Now the judgment in all these three cases is, *Quod prædictæ litteræ patentes dicti domini regis revocentur, cancelentur, evacuentur, adnullentur et vacuæ, et invalidæ, pro nullo penitus habeantur et teneantur; ac etiam quod irrotulamentum eorundem cancelletur, cassetur et adnihiletur, &c.* Hereof our Lord Chancellor of England (for foreign chancellors, it may be, have not like authority) is called *cancellarius*, à *cancellando* i a *dignioci parte*, being the highest point of his jurisdiction, to cancel the King's letters patents, under the Great Seal, and damning the inrolment thereof by drawing strikes through it like a lettee."<sup>81</sup>

"The Chancellor said, in 2 E. III, in the court of chancery at Westminster, in *Theoband de Veron's* case—in a case that concerned living which belonged to his ordinary powers—that the court of chancery is a court of equity, where we grant a writ to every man that comes to demand his heritage according to that which is found by office," &c.

As to this Lord Coke says: "In that extent of equity, all the courts of Westminster are courts of equity—viz: to administer justice according to the common law."<sup>82</sup> Referring to "our ancient authors, which speak of the court of chancery," he says they all speak of the ordinary jurisdiction of the Chancellor, but none of them of any court of equity."<sup>83</sup>

<sup>81</sup> 4 Inst., 88; remarked on in Legal Judic. in Ch., edi. 1727, ch. 5, p. 218 to 220. The cases cited in the margin of 4 Inst., 89, are E. III, 7; 17 E. III, 59; 21 E. III, 47; 6 E. IV, 9; and a case

in 3 Eliz. in Dyer. The case of *Hunt v. Coffin*, 2 Dy. 197 b, is mentioned in ch. 30, § 5.

<sup>82</sup> 2 Inst., 552.

<sup>83</sup> *Id.*

The author of "Legal Judicature in Chancery" did "*not* find any traces of a *court of equity* in chancery in the time of Edward the Second."<sup>84</sup> As to *proceedings in chancery* in that reign, there are entries which Mr. Duffus Hardy's searches in the Tower of London enabled Lord Campbell to publish.<sup>85</sup>

An order was made by the Lords that the Chancellor and the other courts should lay before parliament the cases pending in their courts, which they cannot decide without parliament.<sup>86</sup> Accordingly in the parliament held at Lincoln, in 1315 (Jan. 28), the justices of both benches brought in briefs of such matters as were properly determinable in parliament,<sup>87</sup>

Bills or petitions for grace and favour were referred by the King (or parliament) sometimes to the council, sometimes to the Chancellor alone.<sup>88</sup>

Mr. Stubbs truly observes, that "it was from the share taken by the Chancellor in examining and reporting on the bills of grace and favour that his equitable jurisdiction in the fourteenth century grew up."<sup>89</sup>

"Lambard in his *Archain*.<sup>90</sup> 62, says that "when the Courts of Chancery and King's Bench ceased to be ambulatory, and became settled courts in a certain place,<sup>91</sup> that then the King committed to his Chancellor, together with the charge of the Great Seal, his only legal, absolute and extraordinary preëminence of jurisdiction," &c.<sup>92</sup>

<sup>84</sup> Edm. 1727, ch. 2, p. 28.

<sup>85</sup> 1 Lives of Chancellors, ch. 12, p. 209 to 212, of 2d ed. (1846.)

<sup>86</sup> Rolls 1, 350, is cited in *Id.*, p. 197, of 2d ed. (1846); p. 189 of Boston ed. 1874.

<sup>87</sup> *Id.*

<sup>88</sup> Hist. of Ch., ed. 1726, p. 13; 3 Bl. Com., 50, 51.

<sup>89</sup> 2 Stubbs's Const. Hist., ch. 16, pp. 263, 264.

<sup>90</sup> *William Lambarde*, of Kent, born in 1536, keeper of the records in the Tower, &c., and a learned and industrious antiquary, was author of the '*Archainomia sive de priscis Anglorum Legibus*,' 1568, 4to. He died in 1601. Granger's Biogr. Hist., vol. 1, ed. 1779,

p. 269. There is further mention of him in ch. 34, § 9.

<sup>91</sup> 4 E. III is the year mentioned in 1 Eq. Cas. Abr., 129, *note*. Lord Campbell is treating of the time of John de Stratford's chancellorship, under his first appointment, when he says "there was likewise introduced *about this time* a great improvement in the administration of justice by rendering the court of chancery stationary at Winchester." 1 Campbell's Lives of Chancellors, ch. 13, p. 217.

<sup>92</sup> 1 Eq. Cas. Abr., 129, *note*; Bac. Abr., tit. *Court of Chancery*, vol. 2, p. 451, of Lond. ed. 1832; Legal Judic. in Ch., ed. 1727, p. 29.

"It is said in 10 E. III (59, 60,) that the Chancery and the King's Bench is one place or court; but here it is to be noted that at this time and before the court of chancery was a settled court, in a certain place, to the great benefit and ease of the subject."<sup>93</sup>

Mr. Stubbs says:

"When, early in the reign of Edward III, the Chancellor ceased to be a part of the King's personal retinue, and to follow the court, his tribunal acquired a more distinct and substantive character, as those of the other courts had done under the like circumstances; petitions for grace and favour began to be addressed primarily to him, instead of being simply referred to him by the King, or passed on through his hands."<sup>94</sup>

This passage should be compared with § 21 of ch. 19 (pp. 565, 556), and with the next section of this chapter.

Where, during the chancellorship of *Robert de Sadynghton*—Sept. 29, 1343, to Octo. 26, 1345—the Chancellor commonly sat, and in whose presence, appears from an entry in July, 1345, in which month the King sailed for and returned from Flanders, his son, Lionel, being guardian of the realm in his absence.<sup>95</sup>

Quod quidem sigillum idem Dominus Rex a *Roberto de Sadyngton Cancellario suo*, super passagio suo versus dictas partes Flandriæ prius recessit idemque Cancellario, in quadam bursa inclusum in Magna Aula Regis *apud Westmonasterium in loco ubi idem Cancellarius communiter sedet inter Clericos Cancellariæ pro officio suo exercendo in præsentia eorundem clericorum liberavit.*"<sup>96</sup>

10. *How equitable jurisdiction was exercised after 1345, and until Chancellor Offord's death in 1349; especially of the writ of 22 Edw. III, mentioned in 1 Campbell's Lives of Chancellors, ch. 14, p. 251, of edi. 1846, pp. 236, 237 of Boston edi. 1874.*

Among the cases in Br. Abr., under title '*Petition & Monstrans de*

<sup>93</sup> 2 Inst., 552, 554. A case, in 10 E. III, is cited in Fitzherb. Abr., tit. *Petition*.

<sup>94</sup> 2 Stubbs's Const. Hist., ch. 15, pp. 268, 269; Hardy's Close Rolls, p. 109.

<sup>95</sup> 2 Stubbs's Const. Hist., ch. 16, p. 394, note 2.

<sup>96</sup> 1 Campbell's Lives of Chancellors, Boston edi. 1874, p. 235; citing Rot. Cl., 19 Ed. III, p. 2.

*droit*,<sup>97</sup> is one in 21 E. III, shewing as to petitions of right,<sup>98</sup> that they "ought to be *directed by their endorsement* to the chancellor." A petition complaining of a judgment in the Common Pleas was, in 21 and 22 Edw. III, "*referred to the chancery*."<sup>99</sup> With some of the proceedings in ch. 19, § 33, p. 588, may be compared the following.

The writ in 22 Edw. III, to the sheriffs of London, mentioned by Dr. Wooddesson,<sup>100</sup> Mr. Spence,<sup>101</sup> and Lord Campbell,<sup>102</sup> is as follows:<sup>103</sup>

Rex Vicecomit. London, salutem. Quia circa diversa negotia nos et statum regni nostri Angl. concernentia sumus indies multipliciter occupati, volumus quod quælibet negotia tam communem legem regni nostri Angl. quam gratiam nostram specialem concernentia penes nosmetipsos habens proseguend'. eadem negotia, videlicet negotia. ad communem legem penes venerab'. virum elect' Cantuar' confirmat' Cancellarium nostrum per ipsum expediend. Et alia negotia de gratia nostra concedenda penes eundem Cancellarium seu dilectum clericum nostrum custodem sigilli nostri privati proseguantur. Ita quod ipsi vel unus eorum petitiones, negotiorum quæ per eos nobis inconsultis expediri non poterunt, una cum advisamentis suis inde ad nos transmittant vel transmittat absque alia prosecutione penes nos inde faciend' ut his inspectis ulterius præfato Cancellario, seu Custodi inde significamus velle nostrum, et quod nullus alius hujus modi negotia penes nos metipsos de cetero pròsequantur, vobis præcipimus quod statim visis præsentibus præmissa omnia et singula in civitate prædicta in locis ubi expediri videritis publice proclamari facatis in forma prædicta et hoc nullatenus omittatis. Teste Rege apud Langley<sup>104</sup> 13 die Januarii. Anno regni sui 22 Ed. III."

Whereof the author of *Legal Judicature in Chancery* gives the following translation :

"The King to the sheriffs of London greeting: Forasmuch as we

<sup>97</sup> Folio 130 to 132 of 2d part of Br. Abr., edi. 1576, contains pl. 11, 21 E. III, 47; pl. 43, 24 E. III, 24; pl. 12, 24 E. III, 55; pl. 13, 24 E. III, 65.

<sup>98</sup> 3 Bl. Com., 256; 1 Spence's Eq., 336.

<sup>99</sup> 1 Campbell's *Lives of Chancellors*, p. 274 of 3d edi. (1846); p. 259 of Boston edi. 1874.

<sup>100</sup> 1 Wood. Lect., p. 176 of 1st; p. 105 of 2d edi. (1834.)

<sup>101</sup> 1 Spence's Eq., p. 337; citing (in note) *Introd. to Close Rolls*, p. xxviii;

and *Legal Judicature in Chancery*, p. 30.

<sup>102</sup> 1 Campbell's *Lives of Chancellors*, ch. 14, p. 251, of 2d edi. (1846); pp. 236, 237, of Boston edi. 1874.

<sup>103</sup> Claus., p. 2, m. 2, in dorso per ipsum Regem; *Legal Judic. in Ch.*, edi. 1727, pp. 30, 31.

<sup>104</sup> 19 miles from London at Langley Kings, or Chiltern, Henry III built a palace, in which Edmund, the fifth son of Edward III, was born. *Dugdale's Engl. and Wales*, vol. 5, p. 1043.

are greatly and daily busied in various affairs concerning us and the state of our realm of England: We will, That whatsoever business relating to the *common law* of our *kingdom*, as our *special grace cognizable before us*, from *henceforth* be prosecuted as followeth, *viz*: The *common law business*, before the Archbishop of *Canterbury* elect, our *Chancellor*, by him to be dispatched; and the other matters grantable by our *special grace*, be prosecuted before our said *Chancellor*, or our *well beloved clerk, the Keeper of the Privy Seal*, so that *they*, or *one of them*, transmit to us such petitions of business, which without consulting us they cannot determine, together with their advice thereupon, without any further prosecution to be had before us for the same; that upon inspection thereof, we may further signify to the aforesaid Chancellor or Keeper, our will and pleasure therein; and that none other do for the future pursue such kind of business before us, we command you immediately, upon sight hereof, to make proclamation of the premises, &c." <sup>105</sup>

*John de Offord*, the venerable man who at the date of this writ (January 13, 1348-9) was Chancellor of England, and had been elected archbishop of Canterbury, was never installed in the archbishopric; his death, on May 20, 1349, <sup>106</sup> prevented such installation, and put an end to exercise of *power* by him as chancellor under said writ or otherwise.

II. *How far the statute of 36 Edw. III, c. 9, gave countenance to a court of equity. How, in the latter part of Edward's reign, equitable jurisdiction was exercised in a suit by a wife for specific performance of an agreement; and in other cases.*

The statute of 36 Edw. III, c. 9 (mentioned in ch. 19, § 41) is noticed more than once by Lord *Coke* in speaking of the Chancellor's powers. He says:

"Peruse all the acts of parliament, printed and not printed, and you shall find none that giveth him power to hold any court of equity, where some have thought that the statute of 36 E. III, cap. 9, doth give the chancellor power to draw men before him for relief in equity, but that statute, without question, referreth to his ordinary power; for thereby it is provided that if any man finds himself grieved contrary to the articles above written, or others contained in divers statutes, will come into the chancery, or any for him, and

<sup>105</sup> Legal Judic. in Ch., edi. 1727, ch. 2, pp. 30, 31.

<sup>106</sup> That is the time according to Mr. Foss. The 26th of August, 1348, is the

time mentioned in 1 Campbell's Lives of Chancellors, p. 252, of 2d edi. (1846), p. 237, of Boston edi. 1874. But in this there is obviously a mistake.

thereof make his complaint, he shall presently there have remedy by force of the said articles and statutes without pursuing elsewhere to have remedy; that is, the party grieved shall have an original writ in the chancery, grounded upon these statutes for his relief, although no certain remedy be expressed in the statutes, without pursuit in parliament; which act is but *a declaration of the common law*, as oftentimes hath been observed before, and giveth no shadow to the chancellor of any absolute power.”<sup>107</sup>

Although Lord *Coke* is of opinion that no equitable jurisdiction was given by this statute, yet “there are those who differ from him,” or seem to differ from him, in that respect,<sup>108</sup> because of the words ‘without pursuing elsewhere to have remedy.’<sup>109</sup> ‘That it enlarged the power of the chancellor,’ it seemed to Mr. *Samuel Burroughs*, ‘can’t be denied.’<sup>110</sup>

It is interesting to observe in what manner equitable jurisdiction was exercised during the remainder of Edward’s reign.<sup>111</sup>

Complaints of judgments at law and reference thereof to the chancery had become familiar.<sup>112</sup> Other cases were “*specially* sent to the chancellor, or chancellor and treasurer, sometimes with a requisition that they should assemble the justices and serjeants and others of the council to assist in their determination.”<sup>113</sup>

*Audley v. Audley*, 40 Edw. III, is mentioned by Lord *Campbell* as “the earliest instance” that he has found of a suit for a specific performance.<sup>114</sup> The same case is cited by Mr. Spence.<sup>115</sup> He states it as a complaint made by Lady Audley, suing *without her husband* against her father-in-law. He regards the ‘whole proceeding’ as ‘wholly at variance with the doctrines of the common law, both as

<sup>107</sup> 2 Inst., 553; 4 *Id.*, 82.

<sup>108</sup> In 20 Car. 2, in argument by counsel as to causes of *equity*, it was said “the first statute which gave countenance to this court was the statute of 36 Ed. III, 9; *King v. Standish*, 1 Lev. 241.

<sup>109</sup> Hist. of Chancery, ed. 1726, p. 47; 1 Wood. Lect., pp. 177, 178, of 1st, p. 105 of 2d ed.

<sup>110</sup> Hist. of Chancery, ed. 1726, p. 47.

<sup>111</sup> Cases in 42 Edw. III, and in 51 E. III, are in Fitz. Abr., under tit.

*Byll.*

<sup>112</sup> 1 Campbell’s Lives of Chancellors, p. 274 of 2d ed. (1846), p. 259 of Boston ed. 1874.

<sup>113</sup> 1 Spence’s Eq., p. 338.

<sup>114</sup> 1 Lives of Chancellors, p. 8, of 2d edition (1846,) note; and of Boston ed. 1874.

<sup>115</sup> 1 Spence’s Eq. 337; citing ‘Sir F. Palgrave Council, p. 64, 35 Edw. III; *Ibid*, p. 67, 40 Edw. III.’

regards the institution of the suit by the *wife alone*, and the relief sought—*specific performance of an agreement*. But he states the case as one wherein the complaint was to *the king in parliament*, and *all parties submitted themselves to the king and his council*. And he cites the case in support of his position that “matters of grace were not yet sent exclusively to the chancellor or the Lord Privy Seal”;—that some cases “were still *specially* sent to the Chancellor, or Chancellor and Treasurer, sometimes with a requisition that they should assemble the justices and serjeants and others of the council to assist in their determination.”<sup>116</sup> The same position is supported by Lord Campbell’s statement, that “the wife *petitioned the king* in parliament”; that “the king caused the defendant to come *before the chancellor, the treasurer and the justices and other ‘sages’* assembled in the Star Chamber”; and that “after various proceedings before *the chancellor and treasurer* in the council, performance of the covenant was at last obtained.”<sup>117</sup>

12. *In the reign of Ric. II ‘a settled court of equity before the chancellor.’ In 12 Ric. II Ordinationes Cancellariae Dom. Regis. As to equitable jurisdiction, what was ruled before the statute of 17 Ric. II; and how this statute operated.*

A judge of the King’s Bench said:

“That the court of equity is not so ancient; for before Richard the second, the petitions were to the King, and by him referred sometimes to the chancellor and sometimes to the treasurer, but no settled court of equity before the chancellor till the time of Richard the second.”

This language, though uttered<sup>118</sup> two centuries after Richard the second became King, is quite consistent with reports of what occurred in Richard’s reign.<sup>119</sup>

“1 Rot. Par., 2 R. II, nu. 18, the high court of parliament relieveth but such as cannot have remedy but in parliament.”<sup>120</sup>

<sup>116</sup> 1 Spence’s Eq., 337.

<sup>117</sup> 1 Lives of the Chancellors, note, *ubi supra*, 45 E. III. *Rotulo Parlamenti* Numero, 24, is in 1 Roll’s Abr., tit. *Chancery* (F). What was recognized in 50 Edw. III, may be seen in ch. 19,

§ 55, pp. 629, 630.

<sup>118</sup> By *Dolben*, J., in 4 W. & M., in *Howard v. Tremaine*, 1 Show, 364.

<sup>119</sup> 1 Ric. II, Fitzh. Abr., tit. *Byll*.

<sup>120</sup> 4 Inst., §4.



In parliament at Westminster, on the third day of February, 1387-8, the Lord Chancellor *Arundel* gave this notice:

"That whoever would complain in parliament of such things as could not well be redressed by the common law might carry their petitions to the clerk in chancery, there named and appointed to receive them."<sup>121</sup>

In 12 Ric. II were made *Ordinationes Cancellariæ Dom. Regis*,<sup>122</sup> whereof the 2d and 7th and also the 24th are in 'Legal Judicature in Chancery.'<sup>123</sup>

Rot. Par., 13 R. II, nu. 10, is cited in 4 Inst., 84.

"The parliament for matters determinable at the common law doth remit the parties thereunto. *Nunquam decurritur ad extraordinarium, sed ubi deficit ordinarium.*"

"J. C., complainant against Sir R. K., Knight: for that he enfeoffed the said R. of certain his lands until certain money was to him paid, which was done, and that the said J. could not have his land: whereupon, by writ, the said R. appeared in parliament; both of which parties being then heard, *for that the matter seemed to be determinable at the common law, the same parties were remitted thereto.*"<sup>124</sup>

In 16 Ric. II, the "petitions of the Commons, with their answers, embrace the following:

"That all conspirators may, from henceforth, be tried in those counties, where the indictments and deliverances were made."  
Resp. "If any man be grieved, let him sue to the Chancellor until the next parliament."<sup>125</sup>

Lord Coke states (in 2 Inst., 553) that the first decree that he finds made by the chancellor was in 17 R. II, *John de Wyndeser v. Sir R. le Scrope* (mentioned in ch. 20, § 24, p. 696).<sup>126</sup> In the same parliament was the following:

"Sundry towns of the West part, praying remedy against the officers of the admiralty, for holding plea of matters determinable at the Common Law; the which they pray may be revoked.

The Chancellor, by the advice of the Justices, upon the hearing

<sup>121</sup> 1 State Tr., 99, 100.

<sup>122</sup> As stated in § 7, p. 727.

<sup>123</sup> P. 117.

<sup>124</sup> 13 Ric. II, Cotton's Abr., p. 330,

No. 10.

<sup>125</sup> Cotton's Abr., p. 348, No. 26.

<sup>126</sup> *Id.*, p. 351, No. 10.

of the matter, shall remit the matter to the Common Law and grant prohibition." <sup>127</sup>

The parliament of that year (17 Ric. 2) enacted the statute mentioned in chapter 20, § 24, pp. 695, 696. Of it, Lord *Coke* says:

"This act extendeth to the Chancellor, proceeding in course of equity, and extendeth not to a demurrer in a law upon a bill, but upon hearing of the cause upon these words in the act ('*duly found and proved*'); and this is the first parliament that I find touching this matter." <sup>128</sup>

"From the time of passing the Stat. 17 Richard II, we may consider that the court of chancery was established as a distinct and permanent court, having separate jurisdiction with its own peculiar mode of procedure similar to that which had prevailed in the council, though perhaps it was not yet wholly separated from the council." <sup>129</sup>

13. *Of jurisdiction to compel the execution of trusts; and to restrain waste.*

Uses and trusts have been treated of by *Coke*,<sup>130</sup> *Bacon*,<sup>131</sup> *Mansfield*<sup>132</sup> and *Blackstone*. The latter says: "Uses and trusts are, in their original, of a nature very similar, or rather exactly the same: answering more to the *fidei-commissum* than the *usus-fructus* of the civil law."—"In our law, a use" is "a confidence reposed in another, who was tenant of the land, or *terre-tenant*; that he should dispose of the land according to the intentions of *cestui que use*, or him to whose use it was granted, and suffer him to take the profits. As, if a feoffment was made to A and his heirs, to the use of (or in trust for) B and his heirs; here, at the common law, A, the *terre-tenant*, had the legal property and possession of the land, but B, the *cestui que use*, was, in conscience and equity, to have the profits and disposal of it. This notion was transplanted to England from the civil law, about the close of the reign of Edward III,<sup>133</sup> by means of the foreign ecclesiastics, who introduced it to evade the statutes of mortmain, by obtaining grants of lands, not to their religious houses directly, but to the use of the religious houses; which the clerical chancellors of those times held to be *fidei-commissa*, and binding in conscience; and therefore assumed the jurisdiction, which Augustus had vested in his prætor, of compelling the execution of such trusts in the court of chancery." <sup>134</sup>

<sup>127</sup> *Id.*, p. 356, No. 48.

<sup>128</sup> 4 *Inst.*, 83.

<sup>129</sup> 1 *Spence's Eq.*, 345.

<sup>130</sup> 31 *Eliz. Chudleigh's case*, 1 *Rep.* 121 b.

<sup>131</sup> *Use of the Law*, 153.

<sup>132</sup> 32 *Geo. III.*, in *Burgess v. Wheate*,

1 *W. Bl.* 156, 1 *Eden* 218.

<sup>133</sup> Lord *Bacon* thinks them little known before Richard the Second's time. *Bac. Us.* 24; 1 *W. Bl.* 156.

<sup>134</sup> 2 *Bl. Com.* 327, 328; 1 *Cruise's Dig.*, tit. ii, ch. 1, § 1, p. 387.

In the time of Ric. II, an injunction was granted to restrain waste.<sup>135</sup>

14. *Of the process of subpœna.*

That a 'subpœna in chancery' was known and used in 14 Edw. III, appears in ch. 19, § 21, p. 565. In 37 Edw. III, the mandate of the subpœna was in these words:

"*Quod esset in Cancellaria Regis ad certum diem, ubicunque foret, ad ostendendum si quid pro se haberet vel dicere sciret quare, &c., et ad faciendum ulterius quod curia considerarit.*"<sup>136</sup>

<sup>135</sup> The case is mentioned by Egerton, keeper of the Great Seal, in 41 Eliz. Moore, 554.

<sup>136</sup> According to an entry cited in p. xxx of Introd. to Close Rolls. So stated in 1 Spence's Eq., p. 338, note (a.) It is curious, therefore, to read as to *John de Waltham* (mentioned in ch. 20, § 26, p. 700,) that there was in a petition

of the Commons, in the reign of Henry V, (Rot. Parl. iv, 84,) such a statement as appears in 3 Bl. Com., 52; 1 Cruise's Dig., tit. xi, ch. 1, sect. 1, pp. 390, 391; and Foss's Biogr. Jurid. As to this, see 1 Campbell's Lives of the Chancellors, p. 299, of 2d ed. (1846), p. 283, of Boston ed. 1874.

## TITLE VI.

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### INSTITUTIONS OF ENGLAND FROM 1399 UNTIL 1509.

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Between the chapters under titles I, II, III, IV, and V, and those under titles VI, VII, and VIII, there is a material difference in this: in the former, one endeavour has been to notice chronologically *all* who sat upon the English bench in times preceding the period when there was 'a settled *court of equity* before the chancellor'; in the latter, many pages are occupied with notices of "Lord Chancellors and Keepers of the Great Seal," Masters of the Rolls and other Masters in Chancery, and the Registrars; but as a general rule the notices in the latter titles (VI, VII and VIII) are limited to those who sat in the chancery as a court of equity, or were officers thereof. To this general rule there are rare exceptions. One is the man by whom, in the reign of Hen. IV, the office of Chief Justice of the King's Bench<sup>1</sup> was filled from Nov. 15, 1400—WILLIAM GASCOIGNE.<sup>2</sup> He is almost "the first chief justice of whom we have any personal anecdotes; and the incidents related of him are not only creditable to himself as an individual, but afford also" an early, perhaps "the first example of that honesty, independence and courage which should characterize the judicial bench."

<sup>1</sup> Wherein *Walter de Clopton* was, from the accession of Henry IV until Nov. 1400, when he vacated his seat, and became one of the 'Friars Minors.' He died about 1410. Foss's Biogr. Jurid.

<sup>2</sup> Born at Gawthorp, in Harwood parish (betwixt Leeds and Knaresborough), and mentioned in the Year Books as an advocate in 48 Edw. III, 1374. In 21 Ric.

II (1397), he was appointed one of the King's serjeants. In 1398, he was among the twenty attorneys assigned for different courts or jurisdictions by Henry of Lancaster, Duke of Hereford (Rymer viii, 49), on his banishment from the kingdom. He married first Elizabeth, daughter and heir of Alexander Mowbray, of Kirthington, Esquire; and secondly, Joan (or

"All writers acknowledge his legal merit in the ordinary execution of his office, and it was not long before he had occasion to exhibit the higher characteristics of his nature. In 1405, the army raised by Richard Scrope, archbishop of York, and Thomas Mowbray, earl marshal, having been dispersed by the capture of the two leaders, they were taken to the royal presence at Bishop's Thorpe, the primate's palace, when the king commanded the chief justice to pronounce on them the sentence of death. *Gascoigne* resolutely refused to obey, saying, 'Neither you, my lord, nor any of your subjects can, according to the law of the realm, sentence any prelate to death, and the earl has a right to be tried by his peers.' The King was not to be stopped; he found a willing instrument in Sir *William Fulthorpe*, a knight of Yorkshire.<sup>3</sup> Yet the King was far from withdrawing his confidence from his chief justice, and is said to have been in the familiar habit of putting supposed cases for his opinion.

"The history of *Gascoigne's* committing Prince Henry to prison, is told in various ways. The most authentic seems (to Mr. *Foss*) "to be that the prince, on the arraignment of one of his servants for felony before the chief justice, imperiously demanded his release, and having been refused with a rebuke for his interference, had angrily drawn his sword on the judge. His passion was instantly checked by the dignified demeanour of *Gascoigne*, who calmly called on him to remember himself, reminded him of the position in which he would one day stand, and committed him to prison for his contempt and disobedience. The prince submitted at once, and went away in custody, and when the incident was related to the King, he exclaimed, 'How much am I bound to your infinite goodness, O merciful God, for having given me a judge who feareth not to administer justice, and a son who can thus nobly submit to it.'"<sup>4</sup>

Jane), daughter of Sir William Pickering, and widow of Sir *Henry de Greystoke*, who was made a baron of the Exchequer Octo. 6, 1356 (30 Edw. III). *Foss's* Biogr. Jurid.

<sup>3</sup> "In no way himself connected with the law." *Foss's* Biogr. Jurid.

<sup>4</sup> 2 Turner's Engl., ed. 1825, book 2, ch. 8, pp. 377, 378. *Foss's* Biogr. Jurid. Some of *Gascoigne's* biographers sup-

pose that he died Dec. 17, 1412. But this is a mistake. He is the judge in a case reported in Feb., 1413 (Y. B., 14 Hen. IV, fo. 19), and remained chief justice until the death of Henry IV. In the play of King Henry IV (act v, scene 2), *Shakspeare* has erred, not in regarding *Gascoigne* as alive after the accession of Henry V, but in treating him as re-appointed chief justice by this new King.

Institutions in the reigns of Hen. IV and Henry V, and of others in the same century, are the subject of the next eight chapters:

- CHAP. XXII.—Institutions in the reign of Henry IV—1399 to 1413.  
 XXIII.—Institutions in the reign of Henry V—1413 to 1422.  
 XXIV.—Institutions in the reign of Henry VI—1422 to 1461.  
 XXV.—Institutions in the reign of Edward IV—1461 to 1483.  
 XXVI.—Institutions in the reign of Edward V—1483, Apr. 9 to June 25.  
 XXVII.—Institutions in the reign of Richard III—1483 to 1485.  
 XXVIII.—Institutions in the reign of Henry VII—1485 to 1509.  
 XXIX.—Review of the whole period —1399 to 1509.

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## CHAPTER XXII.

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### INSTITUTIONS IN THE REIGN OF HENRY IV—1399 TO 1413.

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*1. How soon he appointed officers. When he was crowned. Time of session of his first parliament. Its statute.*

At Westminster in 1399 on Tuesday, Sept. 30, after proceedings mentioned in ch. 20,<sup>1</sup> King Henry, sitting in the royal seat,<sup>2</sup> appointed his chief officers.<sup>3</sup> In October, on the 6th, *Thomas de Arundell*, Archbishop of Canterbury,<sup>4</sup> “declared how that a Parliament was summoned by King Richard to be holden there the Tuesday next before”,<sup>5</sup> and announced that King Henry meant to be crowned the Monday ensuing; the Lords and Commons agreed to a continuance

<sup>1</sup> In § 30, pp. 715, 716.

<sup>2</sup> “For that the power of all officers ceased.” Cotton’s Abr., p. 388, No. 58.

<sup>3</sup> “And justices who were sworn after the accustomed manner.” *Id.*

<sup>4</sup> “By the King’s commandment, who then sat in his royal estate in the great

hall at Westminster, there being present the Lords and Commons.” *Id.*, p. 384.

<sup>5</sup> “The which summons was undone and void by the acceptance of the renouncing the same King Richard, and deposing of him, made the same Tuesday.” *Id.*, p. 384.

of the Parliament till the Tuesday evening. The coronation was (as contemplated) on Monday the 13th.<sup>6</sup> Parliament sat from Octo. 14 to Nov. 19<sup>7</sup> (or 29);<sup>8</sup> and enacted a statute of 20 chapters.<sup>9</sup>

2. *Of Richard the second; Octo. 29, 1399, at midnight, removed from the Tower; Feb. 14 dead at Pontefract castle.*

"On Thursday (Octo. 16) the Archbishop of Canterbury willed all the Lords in no wise to disclose anything should be spoke: upon which the Earl of Northumberland demanded of the Lords what were best to be done *for the life of the late King Richard*, whom they would by all means to be saved; the Lords severally answered that it were good safely *to keep him in some secret place* from all concourse; and that by such sufficient persons as had not been familiar or about him."<sup>10</sup>

"On Monday," Octo. 28, "the King came into the Parliament into the great hall of Westminster, where by the assent of the Bishops and Lords, Richard, late King of England, was adjudged to perpetual prison, as above."<sup>11</sup>

On the 29th, at midnight, Richard was removed from the Tower.<sup>12</sup> He was conveyed to Leeds Castle, in Kent; and thence secretly to Pomfret castle; a place "more distinguished by tragical events than any fortress in England except the Tower." On St. Valentine's day (Feb. 14) he was dead.<sup>13</sup> Supposing "that Henry spoke the truth when he declared that he had no hand in his death,"<sup>14</sup> it is yet considered, that "if Henry were guiltless of Richard's death in fact, he was not guiltless of being the direct cause of it, and the person who directly profited by it."<sup>15</sup>

<sup>6</sup> *Id.*, p. 384, and p. 390 (No. 62).

<sup>7</sup> 3 Stubbs's Const. Hist., ch. 18, p. 17.

<sup>8</sup> Wednesday, the 29th of Nov., is mentioned in Cotton's Abr., p. 401.

<sup>9</sup> 2 Stat. of the Realm, p. 111 to 119. The 6th (that "in petitions to the King for lands, offices, &c., the value thereof shall be mentioned") is in 1 Stat. Rev., ed. 1870, p. 267.

<sup>10</sup> Cotton's Abr., p. 391, No. 74.

<sup>11</sup> *Id.*, No. 77.

<sup>12</sup> 3 Stubbs's Const. Hist., ch. 18, p. 20.

<sup>13</sup> Dugdale's Engl., p. 1308, tit. 'Pontefract;' 4 Collyer's Engl., p. 209, of ed. 1775; 2 Turner's Engl., ch. 7, p. 337;

4 Lingard's Engl., ch. 4, pp. 282, 283; 1 Mackintosh's Engl., Phila. ed. 1830, pp. 284, 285.

<sup>14</sup> 3 Stubbs's Const. Hist., ch. 18, p. 26.

<sup>15</sup> *Id.*, p. 9. Richard's body, after being shown in London at St. Paul's, was interred (19 miles from London) in the church at Langley Kings; and, in 1 Hen. V, removed thence to Westminster Abbey; 5 Dugdale's Engl., p. 1043, tit. 'Langley Kings;' 2 Turner's Engl., ch. 7, p. 339; 4 Lingard's Engl., ch. 4, pp. 282, 283; 1 Mackintosh's Engl., Phila. ed. 1830, p. 286; 3 Stubbs's Const. Hist., ch. 18, pp. 26, 78.

3. *Henry's last act in his first parliament; its operation as to the ex-chancellor, Sir Richard le Scrope. John de Scarle now chancellor; his part in the parliament of 2 Hen. IV. What parliament did as to the chancery.*

The last act of Henry's first parliament was as to William le Scrope, Henry Green and John Bussey;<sup>16</sup> it is the subject of observations by Mr. Foss<sup>17</sup> and Mr. Stubbs. The latter says of the King:

"His last act in the parliament was to except from all the benefits of the national pacification, the estates of Scrope, Bussy and Green, whom he regarded as guilty of all the evil that had come upon the land; yet even here he would try to be just; he would not lay hand on the estates with which those culprits were enfeoffed to the use of others, and he would do nothing that would endanger or disgrace the venerable Lord le Scrope, of Bolton, who had been so faithful to his father and grandfather, and who was in no way answerable for the sins of his unhappy son, the earl of Wiltshire."<sup>18</sup>

*John de Scarle*, who had, after the arrest of King Richard, been appointed Chancellor, was of course not removed by Henry.

In 2 Hen. IV, on "Thursday, being the 20th day of January" (1401), the *knights and burgesses were called into the Chancery* within Westminster Hall *before the Chancellor* and the Steward of the King's House, by name, upon whose appearance the Parliament was continued until Friday following; and *so appointed by the Chancellor* on the King's behalf."<sup>19</sup>

During the session (which continued until Thursday, the tenth of March)<sup>20</sup> there were among the "petitions of the Commons, with their answers," the following:

69. "That no writs be sued out of the *Chancery* or Exchequer to any man to appear at a day, upon pain."

*Resp.* "Such writs shall not be granted without necessity."<sup>21</sup>

No. 85. "That all traverses of office and *scire facias* going out of the *Chancery* may be tried in the King's Bench, or Common Pleas."

*Resp.* "The Chancellor, by virtue of his place, may grant the same."<sup>22</sup>

<sup>16</sup> As to the name of the third, there is a misprint in Cotton's Abr., p. 401.

<sup>17</sup> Biogr. Jurid., tit. *Scrope* (Richard le).

<sup>18</sup> 3 Stubbs's Const. Hist., ch. 18, p. 24.

<sup>19</sup> Cotton's Abr., p. 404.

<sup>20</sup> *Id.*, p. 408, No. 46.

<sup>21</sup> *Id.*, p. 410, No. 69; Rot. Parl. 2, H. IV, Nu. 69, is cited in 4 Inst., 83.

<sup>22</sup> *Id.*, pp. 411, 412. Rot. Parl. 2, H. IV, No. 95 is cited in Legal Judic. in Ch., edi. 1727, ch. 1, p. 13.



4. *The part of Thomas de Arundel (ex-chancellor and archbishop of Canterbury) in the statute of 2 H. IV, ch. 15; and in the sentence against William Sautre—the basis of the writ de hæretico comburendo under which Sautre was burnt.*

The statute of 2 Hen. IV has twenty-four chapters,<sup>23</sup> whereof the second, third, fourth and seventh are in 1 'Statutes Revised,' edi. 1870, p. 268 to 271. Upon the fifteenth, which occupies several pages,<sup>24</sup> there has been much comment.<sup>25</sup> Mr. Green says:

"By the provisions of this infamous act, the hindrances which had till now neutralized the efforts of the bishops to enforce the common law were utterly taken away. Not only were they permitted to arrest all preachers of heresy, all school-masters infected with heretical teaching, all owners and writers of heretical books, and imprison them, even if they recanted, at the King's pleasure, but a refusal to abjure, or a relapse after abjuration, enabled them to hand over the heretic to the civil officers, and by these—so ran the first legal enactment of religious bloodshed which defiled our statute book—he was to be burned on a high place before the people."<sup>26</sup>

The guilt of countenancing, encouraging, and aiding in the passage of this statute must by other ecclesiastics be shared with Thomas de Arundel, ex-chancellor of England and Archbishop of Canterbury; but besides his the primate's part in its enactment, the proceeding against William Sautre was before him.<sup>27</sup> His sentence<sup>28</sup> was the foundation of the writ *de hæretico comburendo* in F. N. B. (269);<sup>29</sup> which bears teste 26 Feb., 2 H. IV, and is stated by Sir Matthew

<sup>23</sup> 2 Stat. of the Realm, p. 120 to 132.

<sup>24</sup> *Id.*, p. 125 to 128.

<sup>25</sup> 12 Rep. 56; 3 Inst. 39; 4 *Id.*, 83; 4 Bl. Com. 46, 47; Green's Short Hist., ch. 5, pp. 278, 279.

<sup>26</sup> Green's Hist. of Engl. Peop., book 4, ch. 5, vol. 1, p. 523.

<sup>27</sup> Sautre, while a parish priest at Lynn, had been cited before the bishop of Norwich two years before for heresy, and forced to recant. But he still continued to preach against the worship of images,

against pilgrimages and against transubstantiation till the statute of heresy strengthened Arundel's hands. In February, 1401, Sautre was brought before the primate as a relapsed heretic, and on refusing to recant a second time, was degraded from his orders." *Id.*, pp. 523, 524.

<sup>28</sup> 1 St. Tr., pp. 173, 174.

<sup>29</sup> Cotton's Abr., 407; 2 Stubbs's Const. Hist., ch. 18, pp. 31, 32, and pp. 357, 358.

Hale to have been "formed and made by the advice of the lords temporal in parliament."<sup>30</sup> In the writ is this recital:

"The venerable father Thomas, archbishop of Canterbury, primate of all England, and legate of the apostolic see, with the consent and assent of the bishops and his brothers and suffragans, and also of the whole clergy of his province in his provincial council assembled, the orders of law in this behalf requisite, being in all things observed, by his definitive sentence pronounced and declared *W. Sawtre* (sometime chaplain, condemned for heresy, and by him the said W. heretofore in form of law abjured, and him, the said W., relapsed into the said heresy) a manifest heretic, and decreed him to be degraded"—"and left him to the secular court."

After which recital, the writ informs "the mayor and sheriffs of London," that such heretics "ought to be burnt with a burning flame of fire," and commands them to "commit to the fire the aforesaid W.," before the people publicly, "and cause him really to be burnt in the same fire."

Under this writ poor Sautre, parish priest of the church of St. Osith's, London, was *really burnt* at Smithfield about the 28th of February—burnt for maintaining opinions of John Wickliff, often styled the Morning Star of the Reformation!<sup>32</sup>

5. *In 1401, the Great Seal resigned by Scarle and delivered to Bishop Stafford. What the Chancellor did in the parliament of 1402; what parliament, did as to matters in chancery by stat. 4 Hen. IV.*

In 1401 "Scarle, on the 9th of March, resigned the Great Seal,"<sup>32</sup> which was given to bishop *Stafford*; the very prelate who had been Chancellor during the "latter years "of Richard."<sup>33</sup>

<sup>30</sup> 1 Hale's P. C., 396.

<sup>31</sup> 2 Fuller's Worthies, edi. 1840, pp. 353, 354; 1 Hale's P. C., 396; 4 Bac. Abr., tit. *Heresy*, p. 180, of Lond. edi. 1832; 3 Stubbs's Const. Hist., ch. 19, pp. 357, 358.

<sup>32</sup> He continued, however, one of the King's council for the rest of his life. (Acts Privy Council i, 126-127.) He received the archdeaconry of Lincoln in December, 1401, and died about April, 1403. (Le Neve, 156.) His residence in London was in Chancery Lane, on the

site since known as Serjeants's Inn. Foss's Biogr. Jurid.

<sup>33</sup> 3 Stubbs's Const. Hist., ch. 18, p. 33. Mr. Foss says of Edmund de Stafford: "Although a friend of King Richard, it is evident that he succeeded in disarming the new monarch of any enmity he might indulge against him on that account. He attended in his place in the first parliament of Henry IV, and was one of the prelates who assented to the imprisonment of the deposed King." Biogr. Jurid.

During his chancellorship was Henry the Fourth's Eastern correspondence; of which a specimen is given by Sir Henry Ellis.<sup>34</sup> Bishop *Stafford* was still chancellor at the end of the third and the beginning of the fourth year of Henry IV.

In 1402, "on Saturday, the morrow after St. Michael, the Knights and Burgesses were called by name *in the Chancery* within Westminster Hall, *before the Chancellor* and others of the King's council, and from thence adjourned until Monday after."

On Monday, the second of October, the Chancellor, in the presence of the King, declared the "cause of the Parliament before the Lords and Commons."<sup>35</sup>

The session ended on the 25th of November.<sup>36</sup> The "petitions of the Commons, with their answers," include this:

No. 112. "That remedy may be had against such feoffees in trust of lands or rents as do charge the same with rent-charges against the will of the feoffers."<sup>37</sup>

*Res.* "Let the King's council be advised hereof until the next parliament."

The statute of 4 Hen. IV (1402)<sup>38</sup> has chapters whereof the twelfth, twenty-second and twenty-third are retained in 1 'Statutes Revised.'<sup>39</sup> The seventeenth chapter has in the margin thereof words importing that "infants shall not be received into orders of friars without the consent of parents"; and that *the chancellor shall have jurisdiction herein*."<sup>40</sup> Another chapter is as follows:

"Where, as well in plea real as in plea personal, after judgment given in the courts of our Lord the King, the parties be made to come in upon grievous pain, sometime before the King himself, sometime before the King's council, and sometimes to the Parliament to answer there of new, to the great impoverishment of the parties aforesaid and in the subversion of the common law of the land; it is ordained and established, that after judgment given in the courts of our Lord the King, the parties and their triers shall be thereof in peace until the judgment be undone by attainr or by error, if there

<sup>34</sup> Orig. Let., 3d series, vol. I, p. 54 to 58.

<sup>35</sup> Cotton's Abr., p. 415.

<sup>36</sup> Cotton's Abr., p. 418, No. 28.

<sup>37</sup> *Id.*, p. 424.

<sup>38</sup> 2 Stat. of the Realm, p. 132, *et seq.*

<sup>39</sup> Edi. 1870, p. 272 to 275.

<sup>40</sup> 2 Stat. of the Realm, p. 138.

be error, as hath been used in the times of the King's progenitors."<sup>41</sup>

In that parliament of 4 Hen. IV, there were two petitions of the Commons to the King; which are on pages 1028 and 1029, in the appendix to Mr. Sanders's recent work,<sup>42</sup> and which previously to that work were remarked upon in 14 Jac. 1 (1616), by the Attorney-General Bacon and others.<sup>43</sup>

Whether the statute of 4 H. IV, c. 22, 'be against conscience or not,' is the subject of two chapters of 'Doctor and Student.'<sup>44</sup>

*6. Death in 1403 of the Ex-chancellor, Sir Richard le Scrope.  
His character.*

Sir Richard le Scrope died May 30, 1403, at about the age of seventy-five.

"The union of such qualities as he possessed, both as a soldier and a statesman, are seldom to be found in one man. Throughout his long military career he was highly distinguished for his valour; and the talents and sagacity he exhibited in his civil employments were equally remarkable. Though connected with all the intricate proceedings of the unfortunate reign of Richard II, he steered clear of the shoals on which his contemporaries stranded, and preserving the esteem of all classes to the close of his life, he well deserved the character which Walsingham gives him, that he was a man who had not his fellow in the whole realm for prudence and integrity."<sup>45</sup>

<sup>41</sup> *Id.*, p. 142. It is here numbered 23, and it (c. 23) is remarked on in 2 Reeve's Hist. of Eng. Law, ch. 18, edi. 1869, p. 495. What have been usually classed as chapters 21, 22 and 23, and how they follow in the roll, is stated in notes in 2 Stat. of the Realm, p. 142.

<sup>42</sup> Mentioned in ch. 21, § 7, p. 727 note.

<sup>43</sup> *Id.*, pp. 96, 97; and in vol. 2, ch. 35, § 39, of this history.

<sup>44</sup> Ch. 18 and ch. 19. 'What is equity,' and 'In what manner a man shall be holpen by equity in the laws of England' are the subjects of other chapters (ch. 16 and ch. 17) in the same book, which Lord Coke mentions are "written in

23 H. VIII—dialogue wise between a Doctor of Divinity and a Student of the Common Law." He adds, "the author's name was *St. Germin*, a discreet man, and well read, I assure you, both in the common law and in the civil and canon laws also." Pp. xxxi, xxxii, of Preface to 10 Rep.

Chapters 16 to 19 of Doctor and Student, are p. 52 to 67 of edi. 1721; p. 47 to 61 of edi. 1751; p. 45 to 57 of edi. 1792, and edi. 1815.

<sup>45</sup> Foss's Biogr. Jurid. His remains were deposited in the abbey of St. Agatha, near Richmond, where those of his father rested. His will is in the 'Testamenta Vetusta' (i, 156).

By his wife, Blanche, daughter of Sir

7. In 1403 the Great Seal resigned by Bishop Stafford, and delivered to Henry Beaufort, bishop of Lincoln. He opened the parliament of 5 Hen. IV (1403-4). Its statute.

*Edmund de Stafford*, bishop of Exeter, retained the Great Seal till the end of February, 1403.<sup>46</sup>

*Henry Beaufort*,<sup>47</sup> who had been educated partly at Aix-la-Chapelle and partly at Queen's College, Oxford, received, in 1397, the deanery of Wells, together with a prebend in the church of Lincoln, and was elected bishop of the latter see July 14, 1398, and about 1399 appointed chancellor of the University of Oxford; an office which he held only one year.<sup>48</sup> Upon Stafford's resignation,

William de la Pole, and sister of Michael, Earl of Suffolk, he had four sons, the eldest of whom, William, after being created by Richard II, in 1397, Earl of Wiltshire, and in 1398 Knight of the Garter, was, in 1399, beheaded without trial, and his honours and estates forfeited, as mentioned in § 3, p. 748. The second son, Roger, succeeded his father; the third, Stephen, was an adherent of Richard II, but afterwards was received into Henry's confidence; and the fourth, Richard, Archbishop of York, was beheaded for conspiracy against Henry in 1405. *Id.*

<sup>46</sup> That he retained the King's favour is manifest from his being selected as a trier of petitions in several subsequent parliaments, and also as one of the King's council. It is supposed that he had been educated at the University of Oxford, in the college then called Stapleton Hall, as he added two to its fellows, providing estates for their support, and as the name of Exeter College, which it now bears, is supposed to have come from him. He died Sept. 4, 1419, having presided over his diocese nearly a quarter of a century. His remains were deposited in his own cathedral under an alabaster tomb, with a rhyming Latin

inscription. Foss's Biogr. Jurid.

<sup>47</sup> At the time of the proceedings (mentioned in ch. 20, § 27, p. 703 note) as to the children of John of Gaunt by Catherine Swinford, Henry Beaufort, the second son, was probably just of age, as he is called 'clericus' on the roll. *Id.*

<sup>48</sup> When, little more than a boy, he formed an amatory connection with Alicia, daughter of Richard, Earl of Arundel, sister to the Archbishop of Canterbury, and nearly related by marriage to John of Gaunt, and had by her a daughter named Joan. This amour did not impede his future fortunes, nor prevent his brother, King Henry IV, from placing his own son, afterwards Henry V, in the same college, under the tuition of Beaufort. This was about 1399, when Beaufort had been appointed chancellor of Oxford. While tutor, he, no doubt, ingratiated himself with his pupil; he seems to have been not a very severe preceptor, judging from the money which he advanced to the Prince, being no less than £826 13s. 4d., the whole of which was repaid as soon as Henry came to the throne. (*Devon's Issue Roll*, 329.) Beaufort accompanied King Richard on his expedition to Ireland, during which

*Henry Beaufort*, bishop of Lincoln, received the Great Seal as Chancellor of England.<sup>49</sup>

At Westminster, 5 Hen. IV (1404), Jan. 14, the Bishop of ———, <sup>50</sup> brother to the King, and Chancellor of England, in the presence of the King, Lords and Commons, declared the cause of the Parliament."<sup>51</sup>

Of the statute of this parliament<sup>52</sup> the tenth chapter (that justices of the peace shall imprison in the common jail only) is in 'Statutes Revised.'<sup>53</sup>

8. *Death in 1404 of Ex-chancellor William, of Wykeham, bishop of Winchester. Observations upon his motto. His disposition of his property.*

*William of Wykeham*, bishop of Winchester, occasionally availed himself, during the last two years of his life, of a bull from the pope enabling him to appoint one or more coadjutors to perform the duties of his diocese when he found himself incapable. Still, however, he continued to transact business till within four days of his death, which occurred at South Waltham on Sept. 27, 1404, when he had attained the age of eighty years.

Considering there is no room for two opinions as to the meaning of his motto, '*Manners makyth man*,' Mr. Foss says:

"It is difficult to suppose that any one could seriously believe that a person of his character intended to intimate that man's worldly interests are best forwarded by elegant behaviour and general politeness, or that he could possibly be so absurd as to hold himself up as an example of the truth of the sentiment. Without raising the

Henry of Lancaster came back from his exile; and he was one of three bishops who were with the King on his too long delayed return. His indifference to the event, and his politic character, are shown by his soon appearing in parliament and consenting to Richard's perpetual imprisonment. He was present at the earlier councils of Henry IV; and, in 1402, was sent to escort to England his second wife, Joan, of Navarre, Duchess of Brittany. The marriage was on the

7th, and her coronation on the 25th of February, 1403. Foss's Biogr. Jurid.

<sup>49</sup> For his accommodation in attending the court, the towns of 'Woltonstowe and Old Stratford' were assigned for his livery, and, '*pro herbergiagio*,' of his servants and horses. *Id.*

<sup>50</sup> *Lincoln* should have been printed in Cotton's 'Abr., 425.

<sup>51</sup> *Id.*

<sup>52</sup> 2 Stat of the Realm, p. 143 to 148.

<sup>53</sup> Edi. 1870, pp. 275, 276.

question whether the advocates of this interpretation can produce a single instance in which the writers of the age have used the word 'manners' in the sense they ascribe to it, it may be fairly asked—looking at the obscurity of his origin (which he could not hope, and which there is no evidence that he wished, to conceal) and to the active industry and practical employment of his earlier years, and considering the sacredness of his profession, and the frequent and ostentatious use of this motto in his educational colleges—whether it is not palpable that it was his intention by its adoption, to inculcate the principle that a man's success and estimation, even in this world, depended not on his birth, or his fortune or his talents, but on his conduct and moral worth."

His will is mentioned as a document shewing that he preserved that precision and considerate pre-arrangement for which he was remarkable.

"In this disposition of his property, he was merely carrying on the daily practice of his life. During its whole continuance he seems to have employed his riches in aiding his tenants, advancing his friends, relieving the needy, and in a large and munificent hospitality, besides assisting in the repair of churches, highways and bridges."

When the colleges which he determined to erect at Oxford and at Winchester had been finished and by him liberally endowed, then he undertook the reparation of his own cathedral, and did it in a magnificent manner; thus occupying the last ten years of his life. In this cathedral he was buried, in the splendid oratory which he had erected in the very place where he had been accustomed to perform his daily devotions in his youth.<sup>54</sup>

9. *Mastership of the Rolls; held by Thomas de Stanley till 1402; by Nicholas Bubbewith from 1402 to 1405; and by John Wake-ring from 1405 to the end of the reign*

*Thomas de Stanley*, mentioned in ch. 20, § 26, p. 701, continued Master of the Rolls till Sept., 1402, when he was superseded.<sup>55</sup> *Nicholas Bubbewith*,<sup>56</sup> who succeeded him, Sept. 24, 1402, was in the office

<sup>54</sup> Foss's Biogr. Jurid.

<sup>55</sup> It seems his offence was, that he obtained the pope's bulls for certain benefices; a pardon being granted to him on that account. Foss's Biogr. Jurid.

<sup>56</sup> Born at Menethorpe, in Yorkshire, and brought up in the neighbouring township of Bubbewith, from which he acquired his name. He was prebendary of Hayes in the church of Exeter in 1396, and was collated to the archdea-

less than two years and a half; resigning it March 2, 1405.<sup>57</sup> *John Wakering*<sup>58</sup> was on that day advanced to the office, and held it during the remainder of the reign.<sup>59</sup>

10. *Parliament of October 1404 opened by Henry Beaufort, bishop of Lincoln. The Great Seal resigned by him in March 1405; and delivered to Thomas Langley. He opened the parliament of 7 Hen. IV (1406). Its proceedings.*

In 6 Hen. IV (1404), "on Monday, the 6th of October, in the great chamber within the Priory of Coventry," "the Bishop of Lincoln, the King's brother, Chancellor of England, in the presence of the King, Lords and Commons, declared the cause of that assembly."<sup>60</sup>

The statute of 6 Hen. IV (1404), has four chapters; whereof the second is in 1 'Statutes Revised.'<sup>61</sup>

To the bishopric of Winchester, vacant by Wykeham's death, the King procured the election of *Henry Beaufort*; on his translation to this see from that of Lincoln, he resigned the Great Seal in March, 1405 (6 Hen. IV).<sup>62</sup> Then *Thomas Langley* (or Longley)<sup>63</sup> received

conry of Dorset in 1400, to which was added, in 1401, that of Richmond, which he held, however, for only two days. So early as 1397 he was a clerk or master in chancery, receiving petitions in parliament. *Id.*

<sup>57</sup> He was elected Bishop of London May 13, 1406; translated to Salisbury August 14, 1407, and to Bath and Wells April 1, 1408. During these changes he held the office of treasurer for about two years. In 1414 he was one of the prelates sent to Rome to assist the cardinals in deciding between the three candidates then contending for the papal chair, when the choice fell upon Martin V. While on that mission he joined in inducing Giovanni de Serravalli, Bishop of Fermo, to undertake the translation of Dante's 'Commedia' (Tiraboschi, Poes. Ital. ii, 46.)

He is described as discreet, provident and circumspect, both in temporal and spiritual affairs, and charitable and munificent both in his life and the disposition

of his will. He had presided over the diocese of Bath and Wells more than sixteen years, when he died Octo. 27, 1424; he was buried in his chapel at Wells. *Id.*

<sup>58</sup> So called from a village of that name in Essex. He was one of the masters or clerks of the higher grade in chancery; certainly in 19 Ric. II (1395), when he acted as receiver of petitions to parliament; and probably for sometime before, as he was instituted to the valuable living of St. Benet Sherehog in London in 1389. *Id.*

<sup>59</sup> He became archdeacon of Canterbury in 1405, and canon of Wells in 1409. *Id.*

<sup>60</sup> Cotton's Abr., 437.

<sup>61</sup> 2 Stat. of the Realm, p. 148 to 150; Stat. Rev. edi. 1870, pp. 276, 277.

<sup>62</sup> But, during the remainder of the reign, he acted as one of the council. Foss's Biogr. Jurid.

<sup>63</sup> Descended from an honorable family in Yorkshire. He studied at Cambridge,



it; being about a year before the Parliament of 7 Hen. IV (1405-6).<sup>64</sup>

This parliament adjourned from time to time. Its first session began on Monday, the first day of March, 7 Hen. IV (1406).<sup>65</sup> Its second session was from October 15 to Dec. 22. Among the proceedings (during this second session) are the following:

66. "The Speaker, on behalf of the Commons, requireth that the Lords of the Council might be sworn to observe the articles ensuing. The Archbishop of Canterbury, for himself and others, refuseth to swear, but offereth to do what they may. The King thereupon chargeth the same archbishop and others of the council, on their allegiance to take the oath; who took the same accordingly. And further at the same request, it is assented that all others, the King's officers of his household and of all his courts should be sworn to accomplish the same oath."

67. "The first that worthy councillors and officers should be appointed and not to be removed without good proof."

68. "That no due grants be stayed at the Great or Privy Seal."

69. "That none about the King's person do pursue any suit or quarrel by any other means than by the order of the common law."

70. "That no officer be appointed by any mediation contrary to the laws."

74. "That two certain days in the week may be appointed for all suitors to exhibit their petitions to the King; and that some may be appointed to receive and give answer to the same."

75. "That no man do prefer any bill or suit to the King on any other days."

76. "*That none of the council hold plea of any matter determinable at the common law.*"

78. "That no one of the King's council shall give comfort to any suitor before determination had in full council."

79. "That no matters of council be dispatched but by full assent, unless the same require great haste; in which cases word shall be sent to such councillors as be absent, to the end their advice may be known."

80. "The 15, 16, 17, 18, 19 and 20 articles contain that none of the King's higher officers, or other under-officers or clerks of any of his courts or of his household, shall take none other than their

and in his youth was a retainer of the house of Lancaster. Educated as a priest, he was preferred in 1400 to a canonry, and, in 1401, to the deanery of York. He became keeper of the Privy Seal in 1403 (Devon's Issue Roll, 298), and retained it till March, 1405 (6 Hen. IV). Foss's Biogr. Jurid.

<sup>64</sup> Cotton's Abr., p. 451; 2 Stubbs's Const. Hist., ch. 18, p. 52.

<sup>65</sup> Then "in the Chamber de Pinct, within the King's palace of Westminster, Thomas de Langley, clerk (Chancellor of England), declared that the King had called the Parliament," and stated the object. Cotton's Abr., p. 451.

accustomed fees; nor that they do appoint any minister under them to do the same."

84. "That all the King's great officers of every court and of his house, shall maintain the Common Laws."<sup>66</sup>

The statute of 7 Hen. IV (1405-6) has 18 chapters;<sup>67</sup> whereof the first, second, third, sixth, thirteenth and fifteenth are in 1 'Statutes Revised.'<sup>68</sup>

11. *In 1407 Chancellor Langley resigned, and was succeeded by Archbishop Arundel. Parliament at Gloucester. Its proceedings.*

The parliamentary action of 1406 was followed by the resignation<sup>69</sup> of the Chancellor, *Langley*.<sup>70</sup> On the 30th of January, 1407, he was succeeded by *Thomas de Arundel*, now Chancellor for the fourth time;<sup>71</sup> and as archbishop still active in proceedings for what he called heresy.<sup>72</sup>

The parliament at Gloucester, mentioned by Mr. Stubbs<sup>73</sup> as in 1407, and in Cotton's Abr. as in 9 H. IV, was continued from Thursday, Octo. 20, until the ensuing Monday.

"On Monday, the 24th of October, the Archbishop of Canterbury, Chancellor of England, by the King's commandment, in the presence of him, the Lords and Commons, declared the cause of the same assembly."<sup>74</sup>

<sup>66</sup> Cotton's Abr., pp. 456, 457.

<sup>67</sup> 2 Stat. of the Realm, p. 150 to 158.

<sup>68</sup> Edi. 1870, p. 277 to 282.

<sup>69</sup> 3 Stubbs's Const. Hist., ch. 18, p. 59.

<sup>70</sup> In the archbishopric of York he was elected successor of Richard Scrope, but the pope resisting, and the death of Bishop Skirlawe happening, he avoided a contest with the papal power by accepting the bishopric of Durham, to which he was elected May 17, 1406. After his resignation of the Great Seal, he was frequently employed in State affairs. In 1409, he had letters of protection on going into Tuscany on the King's business; in 1411 he acted as a commissioner at Hauden-Stank, on the

borders of Scotland. In the latter year, on June 11, he received a cardinal's hat from Pope John XXIII, yet the King's continued confidence in him was shown by making him one of the executors of his will. Foss's Biogr. Jurid.

<sup>71</sup> 2 Stubbs's Const., ch. 18, p. 59.

<sup>72</sup> In 1 St. Tr., p. 175 to 219, is "the trial and examination of Master William Thorpe for heresy before Thomas Arundel, archbishop of Canterbury; 8 Hen. IV, A. D. 1407, written by himself; (1 Fox's Acts and Monum. 689; Coll. Eccl. Hist., 625.)

<sup>73</sup> 2 Const. Hist., ch. 18, p. 60.

<sup>74</sup> Cotton's Abr., p. 464.

“On Tuesday, the 25th of October, the Commons presented their Speaker, *Thomas Chawcer*.”<sup>75</sup>

Among the proceedings on Nov. 9, when the Commons came before the King, is this:

16. “The said Speaker presented a bill on the behalf of Sir Thomas Brook, against William Widecombe; upon the reading of which, the same Speaker required judgment against the same William; whereof advice was taken, and the said William bound in £1,000 to hear his judgment *in the chancery*.”<sup>76</sup>

The statute of 9 Hen. IV (1407), has ten chapters.<sup>77</sup>

12. *In 1409, resignation of the chancellorship by Thomas de Arundel. Who opened the parliament of 11 Hen. IV (1409-10). Its proceedings. A horrible execution (by burning) for so called heresy. As to the part in it of the ex-chancellor and his successor.*

Under the appointment, in 1407, of *Thomas de Arundel* as chancellor, he continued in office only till Dec. 21, 1409.<sup>78</sup>

In the parliament at Westminster in 11 H. IV, “on Monday the twenty-seventh of January” (1409-10), “being in the Quindene of Hilary, for that there was then no chancellor, the Bishop of Winchester, the King’s brother, in the presence of the King, Lords, and Commons, declared the cause of the said Parliament.”<sup>79</sup>

<sup>75</sup> *Id.*, No. 12. Of *Thomas Chaucer*, one of the worthies of Berkshire, it is said: “He was sole heir to Geffery Chaucer, that famous poet, from whom he inherited fair lands at Dunnington Castle, in this county, and at Ewelme, in Oxfordshire. He married Maude, daughter and co-heir of Sir John Burwash, by whom he had one only daughter, named Alice, married unto William de la Pole, Duke of Suffolk. He lieth buried under a fair tomb in Ewelme church.” According to the inscription he died Nov. 18, 1434, and his wife, Matilda, April 28, 1436. 1 Fuller’s *Worthies*, ed. 1840, p. 152. Mr. Stubbs mentions that

“Thomas Chaucer of Ewelme, in Oxfordshire, was “son of a sister of Katherine Swinford;” and states that he, “a cousin of the Beauforts, was speaker.” 2 *Const. Hist.*, ch. 18, p. 63. With this accords Green’s *Short Hist.*, ch. 5, § 1, p. 237.

<sup>76</sup> Cotton’s *Abr.*, p. 465.

<sup>77</sup> 2 *Stat. of the Realm*, p. 159 to 161.

<sup>78</sup> Foss’s *Biogr. Jurid.* Mr. Stubbs states that “Arundel found time to issue a series of constitutions against” the Lollards “in 1409.” 3 *Const. Hist.*, ch. 19, p. 360.

<sup>79</sup> Cotton’s *Abr.*, p. 470.

At another day, "the Commons coming before the King, presented to be their Speaker *Thomas Chaucer*."<sup>80</sup>

14. Upon the request of the Commons, "the King granted that certain of the most learned Bishops, worthy Lords and others, shall be assigned to be of his council; and that they and all the justices shall be sworn to give good counsel and upright judgment."<sup>81</sup>

39. "On Wednesday, the second of May, upon the earnest request of the Commons, such Lords as were appointed to be of the King's council were declared; all who, with the Justices, were sworn to do justice: only the Prince, being one of them, for his worthiness was not sworn."<sup>82</sup>

Wednesday, the ninth day of May, was the last day of this Parliament.<sup>83</sup> Its statute has nine chapters.<sup>84</sup> The ninth chapter (of 11 H. IV) was considered in 10 Jac. I.<sup>85</sup>

In 1409, or 1410, "a frightful execution took place under the act of 1401" (mentioned in § 4, p. 749), "and on this occasion the victim was a layman: John Badby,<sup>86</sup> a tailor of the diocese of Worcester, had been excommunicated for heresy by the bishop, and had refused to abjure; he was brought before the archbishop and clergy in convocation, and persisting in his refusal, was handed over to the secular arm with a *petition, addressed by archbishop Arundel to the lords that he might not be put to death*. Whether the petition were a piece of mockery or not, the unfortunate man was burned; the Prince of Wales being present at the execution, and making a vain attempt to procure a recantation."<sup>87</sup>

<sup>80</sup> *Id.*, pp. 470, 471, § 10. On another page is mention of "*Thomas Chawcer*, chief butler to the King." *Id.*, p. 476, No. 73. On Saturday, the 15th of March, being *Palm Sunday* week, at the request of the Commons the Parliament was adjourned until the Quindenē of Easter then following, being the seventh day of April, at which Quindenē the Parliament reassembled." *Id.*, p. 471, No. 13.

<sup>81</sup> *Id.*, p. 471, No. 14.

<sup>82</sup> *Id.*, p. 473, No. 39.

<sup>83</sup> Cotton's Abr., p. 474, No. 4.

<sup>84</sup> 2 Stat. of the Realm, p. 162 to 166.

<sup>85</sup> *Robert Scarlet's case*, 12 Rep., 98.

<sup>86</sup> Mentioned in 2 Fuller's Worthies, edi. 1840, p. 355.

<sup>87</sup> In 1 State Tr., p. 219 to 226, may be

seen "Proceedings against John Badby for heresy, 10 Hen. IV, A. D. 1409. (Fox's Acts and Monuments, p. 679)," beginning thus: "In the year of our Lord, 1409, on Sunday, being the first day of March, in the afternoon, the examination following of one John Badby, tailor, being a layman, was made," &c., before *Thomas Arundell*, archbishop of Canterbury and others" named, among whom is "*Thomas Bewford*, the Chancellor of England." The language of the text (within inverted commas) is from 3 Stubbs's Const. Hist., ch. 19, p. 361. Mr. Green says: "The prayers of the sufferer were taken for a recantation, and the Prince ordered the fire to be plucked away; but when the offer of life and a pension failed to break the

13. *Thomas Beaufort made Chancellor in 1410; opened Parliament in 13 Hen. IV (1411).*

*Thomas Beaufort*, third and youngest son of John of Gaunt by Catharine Swinford,<sup>88</sup> is mentioned as the only lay chancellor of this reign. He was selected as Archbishop Arundel's successor in the chancellorship, and received the Great Seal Jan. 31, 1410.<sup>89</sup> It is said that the duties of the office were not agreeable to him, and that his desire to be discharged, was refused by the King. He met the Parliament at Westminster in 13 Hen. IV, "the day after All Saints" (1411).

On that day, being Nov. 3, "the Commons were called in the presence of the Steward of the King's House."—"Thomas Beauford, the King's brother, and Chancellor of England," "continued the same Parliament until the Wednesday following."

Then "the said Chancellor by the King's commandment, in his presence and in the presence of all the Lords and Commons, declared" the causes for which "the Parliament was called."

On Tuesday, the fifth of November, the Commons presented before the King and Lords *Thomas Chaucer*, to be their speaker."<sup>90</sup>

The Statute of 13 Hen. IV (1411) has seven chapters,<sup>91</sup> whereof the seventh is in 1 'Statutes Revised.'<sup>92</sup>

14. *What was received by Sir Thomas Beaufort in his chancellorship; when he retired from it; and when Thomas de Arundel was re-appointed to it. His reputation. What was agreed in 13 H. IV.*

Sir Thomas Beaufort, during his chancellorship, "had a grant of

spirit of the Lollard, Henry pitilessly bade him be hurled back to his doom." Short Hist., ch. 6, § 6, p. 279; Hist. of Engl. Peop., book 4, ch. 5, vol. 1, pp. 535, 536.

<sup>88</sup> In 1397, at the time of proceedings mentioned in ch. 20, § 27, p. 703, he was a minor, being called 'domicellus' in the record. Two years afterwards he received a grant from the King of the Castle and town of Castle Acre, in Norfolk. In 1402 he was custos of Lud-

low Castle, and received £88. 18s. 6d. for wages of himself and his garrison to resist the invasion of rebels there. He was, in 1403, appointed admiral of the fleet towards the north, and held the office for many years. In 9 Hen. IV he was made captain of Calais. Foss's Biogr. Jurid.

<sup>89</sup> *Id.*

<sup>90</sup> Cotton's Abr., p. 478.

<sup>91</sup> 2 Stat. of the Realm, p. 166 to 169.

<sup>92</sup> P. 282 to 284 of ed. 1870.

800 marks *per annum*, besides the accustomed fee." After nearly two years of service therein he was allowed to retire Jan. 5, 1412.<sup>93</sup> Thomas de Arundel was then restored to the chancellorship; and held it till the King's death.

He held "the highest judicial office of the realm no less than five times, the aggregate extent of his tenure being eleven years and about eight months out of twenty-six years and a half from his first appointment." This is "evidence to shew that he must have been a man of great vigour and capacity for business; and he left a high reputation as well for learning and intelligence as for personal courage."<sup>94</sup>

Mr. Stubbs is speaking of "intelligent knowledge of the needs of the nation," when he says

"The highest intelligence, on the whole," "is plainly seen to be Arundel's, and next to his, although in opposition for the time, that of the Prince of Wales."<sup>95</sup>

"It is agreed in 13 Hen. IV, and other books, that the King may charge the subject for murage of a town, to which the subjects were charged in the time of insurrection or war for safety; and so for pontage; for *this*, that he which is charged hath benefit by it."<sup>96</sup>

*15. Character of Henry the Fourth. Scene in his last illness.  
When he died.*

Henry "outlived his early popularity; he was for years a miserable invalid; yet he reigned as a constitutional King; he governed by the help of his Parliament, with the Executive aid of a council, over which Parliament both claimed and exercised controul. Never before, and never again, for two hundred years, were the Commons so strong as they were under Henry IV."<sup>97</sup>

"After a very dangerous attack" "at Christmas, 1412, he rallied, and even called his Parliament to meet on the 3d of February." Members "met on that day, but it is not certain that" the Parliament "was formally opened; no record of its action is preserved."<sup>98</sup>

In this last illness of Henry the Fourth is placed a scene between him and his son; as to which, a statement by the contemporary

<sup>93</sup> Foss's Biogr. Jurid. On July 5, 1412, he was created Earl of Dorset. *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> 3 Stubbs's Const. Hist., ch. 18, p. 72.

<sup>96</sup> 12 Rep., 12.

<sup>97</sup> 3 Stubbs's Const. Hist., ch. 18, pp. 71, 72.

<sup>98</sup> *Id.*, 70.

French historian, Monstrelet,<sup>99</sup> may, to many, be less familiar than Shakspeare's interesting picture.<sup>100</sup> The King died in March, on the 20th, and was buried in Canterbury near his uncle, the Black Prince.<sup>101</sup>

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## CHAPTER XXIII.

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### INSTITUTIONS IN THE REIGN OF HENRY V—1413 TO 1422.

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*1. Henry Beaufort, bishop of Winchester, made chancellor. After the King's coronation, the chancellor opened parliament. Its statute.*

Henry, called Henry of Monmouth, from the place of his birth, and educated at Queen's College, Oxford, under the eye of his uncle, Henry Beaufort, the Bishop of Winchester, was, immediately after his father's death, in 1413, proclaimed King by the name of Henry the fifth.<sup>1</sup> On his accession he appointed that uncle his chancellor.<sup>2</sup>

<sup>99</sup> The King's attendant not perceiving him to breathe, concluded he was dead, and covered his face with a cloth. The crown was then upon a cushion near the bed. The Prince, believing his father's death, took away the crown. Shortly after the King uttered a groan and revived, and missing his crown sent for his son, and asked why he had removed it. The Prince mentioned his supposition that his father had died. The King gave a deep sigh and said, 'My fair son, what right have you to it, you knew I had none.' 'My Lord,' replied Henry, 'as you have held it by right of your sword, it is my intent to hold and defend it the same during my life.' V. 3, p. 137-139. This and Walsing-

ham's words in the Sloane MS. are cited in 2 Turner's Engl., 2d edi. (1825), ch. 7, pp. 361, 362, ch. 8, pp. 379, 380.

<sup>100</sup> In King Henry IV, part ii, act iv, scene iv, p. 84, *et seq.* of vol. 5, Lond. edi. 1833.

<sup>101</sup> 1. That his death was, on the "20th of March, 1413, in the 46th year of his age," is stated in 5 Collyer's Engl., p. 27, and not questioned in 2 Hume's Engl., ch. 18, p. 342. That he "expired on the 19th of March, 1413, is stated in 4 Lingard's Engl., ch. 4, p. 321. The statement in the text is according to 3 Stubbs's Const. Hist., ch. 18, p. 70.

<sup>1</sup> 5 Collyer's Engl., ch. 3, p. 30.

<sup>2</sup> Foss's Biogr. Jurid.; 3 Stubbs's Const. Hist., ch. 18, p. 76.

Henry was crowned on the 9th of April.<sup>3</sup> On the 15th of May<sup>4</sup> the chancellor, "by the King's commandment, uttered the cause of the Parliament."<sup>5</sup> Its statute has ten chapters;<sup>6</sup> whereof the fifth and seventh are in 1 'Statutes Revised.'<sup>7</sup>

2. *Of the ex chancellor, Thomas de Arundel, Archbishop of Canterbury; his death in February, 1414.*

After the accession of Henry V, Arundel renewed his attack on the Lollards: Sir John Oldcastle (Lord Cobham) was tried, condemned and now "allowed to escape from prison."<sup>8</sup> The archbishop died at the rectory of Hackyngton on Feb. 20, 1413-14, at the age of 62.<sup>9</sup>

3. *In 2 H. V (1414) Parliament opened by the Chancellor. Its proceedings; especially as to a conveyance to defraud creditors. Under one of its statutes cruel executions for heresy. One of those burnt was Sir John Oldcastle, Lord Cobham.*

In 2 H. V, on "Monday, in the Octaves of St. Martin" (November,<sup>10</sup> 1414), "the Bishop of Winchester, the King's uncle and Chancellor of England," opened the Parliament.<sup>11</sup>

On "the second day of the Parliament, the Commons presented before the King and the Lords Thomas Chaucer, Esq., to be their Speaker."<sup>12</sup>

<sup>3</sup> Collyer's Engl., 31.

<sup>4</sup> "The King, sitting in his chair of Estate, then attending upon him the Bishops, Lords and Commons." Cotton's Abr., pp. 533, 534.

<sup>5</sup> *Id.*

<sup>6</sup> The Statute of 1 Hen. V is in 2 Stat. of the Realm, p. 170 to 174.

<sup>7</sup> Edi. 1870, p. 285 to 287.

<sup>8</sup> 1 State Tr., 252, 253; 3 Stubbs's Const. Hist., ch. 18, p. 79 and p. 81, ch. 19, p. 361.

<sup>9</sup> His liberality to the three cathedrals over which he presided is mentioned, as showing that a love of money was not one of his vices. "Some Latin verses 'in his grace and commendation,' quoted by Weever (226), are cited as

evidence of the estimation in which he was held." To the day on which sentence was pronounced against Oldcastle, the superstition of the town traced the commencement of that inflammation of the throat, which increasing, so as to prevent his taking nutriment, caused his death. He was buried in Canterbury Cathedral. Foss's Biogr. Jurid.

<sup>10</sup> Cotton's Abr., p. 538. The feast of St. Martin, Bishop and Confessor, was November 11; it had an Octave; that is, was celebrated a second time in the week following.

<sup>11</sup> The King sitting in his chair of Estate, in the Chamber de Pinct, within his palace of Westminster. *Id.*

<sup>12</sup> *Id.*, p. 539, No. 10.



After other matters, in some of which Chaucer seems to have been interested,<sup>13</sup> there were the following proceedings as to a conveyance to defraud creditors:

"John Chadworth and other citizens of London, the creditors of William Vennor, a Londoner, who, upon collusion to defraud his creditors, had conveyed away his lands, pray execution of the same lands for certain years, according to the statute made in R. II."

*Resp.* Upon recovering against the said William, by due order of law, after the said William hath appeared in person, or by attorney, execution of his lands shall be awarded."<sup>14</sup>

The first statute of 2 Hen. V (1414) has nine chapters;<sup>15</sup> whereof the first, second, third, fourth and eighth are in 1 'Statutes Revised.'<sup>16</sup> There are other statutes of the same year,<sup>17</sup> whereof 'Statute the second,' ch. 1, is in 1 'Statutes Revised.'<sup>18</sup> After comparing the act of 1401 with that of 1414, Mr. Stubbs observes of the latter, "This is the last statute against the Lollards, and under it most of the cruel executions of the fifteenth and sixteenth centuries were perpetrated."<sup>19</sup> Mr. Green says:

"A conviction of heresy was made to entail forfeiture of blood and estate; and the execution of thirty-nine prominent Lollards as traitors gave terrible earnest of the King's resolve to suppress their sect. Oldcastle escaped, and for four years longer strove to rouse revolt after revolt. He was at last captured on the Welsh border and burned as a heretic."<sup>20</sup>

<sup>13</sup> "Thomas Chawcer, Esq., chief butler to the King, prayeth that the executors of H. IV, as in 1 H. V, may appear, and might pay to him £868 for wine taken up for the King, and due to him upon tallies; whereto the King granteth." *Id.*, p. 540, No. 18.

"At the petition of Thomas Chawcer, Esq., the King, by common assent, affirmeth to him all letters patents to him granted by John, Duke of Lancaster, King R. II, or H. IV, and of this King; albeit, those letters patents make no express mention of the value thereof," *Id.*, No. 20.

"The like request and answer is made to Mark le Fair for £400, as is before, to Chaucer, tit. 18." *Id.*, No. 22.

<sup>14</sup> *Id.*, p. 540, No. 21.

<sup>15</sup> 2 Stat. of the Realm, p. 175 to 187.

<sup>16</sup> *Id.* 1870, p. 287 to 296.

<sup>17</sup> 2 Stat. of the Realm, pp. 189, 190.

<sup>18</sup> *Id.* 1870, p. 297.

<sup>19</sup> 3 Const. Hist., ch. 19, p. 363.

<sup>20</sup> Green's Hist. of Engl. Peop., book 4, ch. 5, vol. 1, pp. 539, 540. A "brief chronicle concerning the examination and death of the blessed martyr of Christ, Sir Johan Oldcastell, the Lord Cobham collected together by Johan Bale," was printed in a pamphlet in 1544, and is reprinted in 1 Harl. Miscel., ed. 1808, p. 246 to 286. An account of "the latter imprisoning and death of the Lord Cobham" is in 1 State Tr., p. 254.

4. *Parliaments in November, 1415; and in March, 1415-16. Each opened by the Chancellor. Proceedings as to Chancery matters.*

A parliament was holden at Westminster in 3 Hen. V (1415), on "the Monday next after the feast of All Saints";<sup>21</sup> which feast was November 1. To this Parliament the Chancellor had the satisfaction of announcing the victory of Agincourt.<sup>22</sup>

The same Chancellor opened Parliament in 3 Henry V, in March 1415-6, on the *sixth*<sup>23</sup> or the *sixteenth*.<sup>24</sup> It was prorogued from the 8th of April unto "Monday in the third week after Easter."<sup>25</sup> After the recess was the following proceeding for *amending a record*:

27. "Alexander Meringe sheweth how he recovered, by his assize, certain lands in little Martham, Tuxford, Milton and Bevercot, against John Tuxford and Katherine, his wife, before Robert Thurwitt, and how by the mistaking of the clerk, contrary to verdict found, the disseisin was entered to be done after the assize brought; whereby no judgment could be given. He therefore requireth that the misprison of the clerk might be amended, and that the justices might proceed to judgment. Whereupon, it was enacted, that the justices, *in the presence of the Chancellor*, should amend the record in the same only point."<sup>26</sup>

The following are among the "petitions of the Commons, with their answers":

44. "Robert Penney and Joane, his wife, as in the right of Joane, cousin, and heir of Giles Norman, complain, for that Sir Thomas Skelton, Knight, had by subtle means, in an assize, recovered against them the manors of West Addorleigh and Sherle, in Southampton, and Soulfield Loveras in the county of Wilts; they therefore pray remedy."

*Resp.* "The plaintiffs shall have remedy by the King and such others as he shall call to him."

45. "John Brampton, of Beverley, merchant, complaineth of John

<sup>21</sup> The Statute of this Parliament is in 2 Stat. of the Realm, p. 191.

<sup>22</sup> Foss's Biogr. Jurid.

<sup>23</sup> 2 Stat. of the Realm, 192.

<sup>24</sup> Cotton's Abr., p. 544. On Wednesday, the third day of the Parliament, the Commons "presented Sir Walter Beauchamp, Knight, to be their speaker."

*Id.*, pp. 544, 545, No. 9.

<sup>25</sup> *Id.*, p. 545, Nos. 12 and 13.

<sup>26</sup> Cotton's Abr., p. 545, No. 17; at the end whereof are these words: "A judgment very necessary, and yet hardly seen, worthy, therefore, to be well marked." *Id.*

Hayton and others for lying in wait to murder him, and prayeth writs out of the *Chancery*, of the peace; which were granted."<sup>27</sup>

46. "That all writs of *subpœna* and *certis de causis* going out of the Chancery and Exchequer, may be controuled, and not granted of matters determinable at the common law, on pain that the plaintiff do pay by way of debt to the defendant £40."

*Resp.* "The King will be advised."<sup>28</sup>

49. "John Sharpe, owner of a ship called the Christopher, of Hull, complaining, sheweth, how that the same Christopher, at Bordeaux, was appointed to be one of the admirals of the English navy, then bound for England, and how that all the English masters were sworn before the chief officers of Bordeaux not to depart or leave the said admiral until they came to England, and how, by doing the contrary the said ship, fully freighted, was taken by the enemy: for the which ship and goods he requireth recompense of all the other ships."

*Resp.* "The Chancellor, by the advice of three of the Justices, shall have power to take order therein."<sup>29</sup>

Statutes of this Parliament are in the printed volumes.<sup>30</sup>

5. *Masters of the Rolls: John Wakering till June 3, 1415; then Simon Gaunstede till the end of the reign.*

*John Wakering* (mentioned in ch. 22, § 9, p. 756,) was, at the accession of Henry V, in the office of Master of the Rolls, but on June 3, 1415, exchanged this office for another.<sup>31</sup> On the same day *Simon Gaunstede*<sup>32</sup> succeeded him as Master of the Rolls.<sup>33</sup>

On the Chancellor's going to France, the Great Seal was left with Simon Gaunstede from Sept. 5 to Octo. 12, 1416.

<sup>27</sup> Cotton's Abr., p. 548.

<sup>28</sup> Cotton's Abr., p. 548. Rot. Parl. 3 H. V, Nu. 46, is cited in 4 Inst., 83. The petition is in 1 Campbell's Lives of Chancellors, ch. 19; stated more fully in ed. 2 (1846), pp. 325, 326, than in Boston ed., 1874, p. 307.

<sup>29</sup> Cotton's Abr., pp. 548, 549.

<sup>30</sup> 2 Stat. of the Realm, p. 102; 1 'Statutes Revised,' ed. 1870, p. 297.

<sup>31</sup> That of keeper of the Privy Seal. (Kal. Exch. ii, 130-2.) Next year he was elected Bishop of Norwich. He was one of six ecclesiastics, selected on

the part of England in 1417 to attend the council of Constance, and is said to have gained the applause of the assembly by his learning and wisdom. Foss's Biogr. Jurid.

<sup>32</sup> Was in holy orders, and connected with the court as early as 9 Ric. II (1386), when his name is attached to the confederation with the King of Castile. Throughout the reign of Henry IV, he is mentioned as one of the clerks of the chancery. (Rymer vii, 515, 809.) *Id.*

<sup>33</sup> *Id.*

6. In 4 Hen. 5 (1416), Parliament opened by the Chancellor. The ex-chancellor, Thomas Beaufort, Earl of Dorset, elevated to a higher dignity. Proceedings in judicial matters.

In the Parliament of 4 Henry V, on October 19, 1416,<sup>34</sup> "the Bishop of Winchester, the King's uncle and Chancellor of England,"<sup>35</sup> declared the King's will.<sup>36</sup>

"On Wednesday, the eighteenth of November, being the last day of the Parliament, the King sitting in his royal estate in full, Parliament created *Thomas Beauford*,<sup>37</sup> Earl of Dorset, to be Earl" (or Duke) "of Exeter, after which the King commandeth him to sit in Parliament according to his estate."

15. "Robert Whittington, Esq., and Ony, his son, complaining, show how that certain of the servants of Richard Oldcastle, Esq., and the borderers of Wales, *by durance of imprisonment*, enforced the said Robert to *release* to the said Richard and Walter Hakelnyt, Esq., all manner of actions; for all which they *pray remedy*."

*Resp.* The King's council shall have power to call the parties before them and to end the same."

17. "John Allen and others, merchants of Coventry, pray restitution of 600 marks of old coin put into the hands of Richard Garmer, late master of the mint within the Tower of London, to be newly coined, for that all the goods of the said Richard were seized to the King's use by the Earl of Arundell, Treasurer of England.

<sup>34</sup> "The King sitting in his chair of Estate, in the Chamber de Pinet, within his palace of Westminster." Cotton's Abr., p. 549, No. 1.

<sup>35</sup> "By the King's commandment, in the presence of him the Lords and Commons." *Id.*

<sup>36</sup> *Id.* "On Wednesday, the third day of the Parliament, the Commons coming before the King and Lords, presented Roger Flower to be their speaker." *Id.*, p. 550, No. 8.

<sup>37</sup> Speaking of this ex-chancellor, after the period when he had resigned the Great Seal, and been created Earl of Dorset, Mr. Foss says: "During the remainder of his life he devoted himself to pursuits more congenial to his taste than the law, distinguishing himself to the last, in the wars of Henry V, as a

brave knight and a wise commander. In the first year of that reign he was made lieutenant of Aquitaine. He next was appointed governor of Harfleur, on its surrender to the English; and after the battle of Agincourt, October 25, 1415, in which he commanded the rear of the forces, he was constituted lieutenant of Normandy." After mentioning his being raised to the title of Duke of Exeter, Mr. Foss says he was "also made a Knight of the Garter. Scarcely a year of Henry's reign was unmarked by his prowess, either in Scotland or in France. In all of these encounters he was victorious, except in the battle of Anjou on April 3, 1421, when the Duke of Clarence was killed, and he was unfortunately taken prisoner." Biogr. Jurid.

*Resp.* "Upon proof hereof before the council they shall see the same paid, so far as the goods will extend."<sup>38</sup>

The Statute of this Parliament (of Octo., 1416,) has eight chapters.<sup>39</sup>

7. *Certain ordinances regarded by Mr. Stubbs as the basis of the English law of admiralty. The Great Seal resigned by Henry Beaufort in July, 1417. Thomas Langley, bishop of Durham, again made Chancellor. He opened the parliament of 5 Hen. V (1417). Its proceedings.*

After mentioning ships, barges and balingers, whereof the King was possessed in Feb. 1417, Mr. Stubbs says:

"Following the example of Richard I, he issued ordinances for the fleets and armies, which may, far more safely than earlier fragments of legislation, be regarded as the basis of the English law of the admiralty, and as no unimportant contribution to international jurisprudence."<sup>40</sup>

"Just previous to the King's next expedition into France, for the support of which" Henry Beaufort "had advanced him the sum of £14,000, secured on certain duties, and for the repayment of which a golden crown was deposited with him as a pledge on July 18, 1417 (Rot. Parl. iv, 111), the Great Seal was resigned by Beaufort on the 23d of that month."<sup>41</sup>

*Thomas Langley* (bishop of Durham) who soon after the accession of Henry V, was sent as one of the ambassadors to the King of France,<sup>42</sup> was, in 1417, July 23, raised a second time to the office of chancellor; and he retained it to the end of the reign.<sup>43</sup>

<sup>38</sup> Cotton's Abr., p. 551.

<sup>39</sup> In 2 Stat. of the Realm, p. 196 to 200.

<sup>40</sup> 3 Const. Hist., ch. 18, p. 88.

<sup>41</sup> "When he obtained a grant of pardon for all crimes and offences. (Rymer ix, 471.) The apparent cause of this retirement was to undertake a pilgrimage to the Holy Land; but the probable one was to proceed to the Council of Constance, then sitting, for the purpose of settling the claims of three contending popes, and of arranging certain reformations in the church."—"In

November following, the new pope" (Martin V) "named the bishop cardinal and apostolic legate in England, Ireland and Wales; but by the remonstrances of Archbishop Chicheley, who considered this an encroachment on his authority, the King forbade him to accept the dignity. From Constance, the bishop proceeded on his pilgrimage to Jerusalem." Biogr. Jurid.

<sup>42</sup> "With whom a truce for one year was concluded." Foss's Biogr. Jurid.

<sup>43</sup> *Id.*

The Duke of Bedford stayed at home as the King's lieutenant.<sup>44</sup> The King was in camp before Rouen in 1417, when he wrote to his Privy Council the letter of October 21, published by Sir Henry Ellis.<sup>45</sup>

In the Parliament of 5 Hen. V, on Nov. 16 (1417),<sup>46</sup> the Bishop of Durham, the Chancellor of England, declared "the King's will."<sup>47</sup>

*John Martin, William Babington, William Poole, William Westburie, John Fame and Thomas Ralfe*, apprentices at the law, and serjeants appointed, had *refused* the same, where, upon the charge of the Warden of England, they took the same upon them."<sup>48</sup>

An ordinance of 5 Hen. V (1417-18), is in 'Statutes of the Realm.'<sup>49</sup>

8. *Chancellor Langley opened the Parliament of 7 Hen. V (1419). In 1320, in June, the King married in France; in December Parliament opened before his return. Enactment that it was not dissolved by, but might proceed after, the King's return.*

In the Parliament of 7 Hen. V, on "the sixteenth day of October" (1419), "the bishop of Duresm,<sup>50</sup> Chancellor of England, before the Duke of Bedford, Warden of England,"<sup>51</sup> again delivered a discourse, and willed the Commons to choose their Speaker.<sup>52</sup>

<sup>44</sup> 2 Inst., 26; 3 Stubbs's Const. Hist., ch. 18, p. 89.

<sup>45</sup> Orig. Let., 3d series, vol. 1, p. 61 to 63.

<sup>46</sup> "In the presence of the puissant Prince, John, Duke of Bedford, brother and lieutenant to the King and warden of England, sitting in the Chamber de Pinct in the palace of Westminster. Cotton's Abr., p. 553.

<sup>47</sup> "In the presence of him, the Lords and Commons." *Id.* "The third day of the Parliament the Commons presented before the said warden and lords *Roger Flower*, Esq., to be their speaker." *Id.*

<sup>48</sup> Cotton's Abr., p. 553, No. 10. *John Martyn* had not worn the coif long before he was raised to the bench of the Common Pleas. *William Babington*

became Chief Baron of the Exchequer Nov. 4, 1319. *William Westbury* was placed in the court of King's Bench Feb. 6, 1326. Foss's Biogr. Jurid.

<sup>49</sup> Vol. 2, p. 200.

<sup>50</sup> So printed in Cotton's Abr., p. 556. A letter written by the King in 1418, from 'beside our town of Faloise,' to the Bishop of Durham, his Chancellor, is in Orig. Let. (published by Sir H. Ellis), 3d series, vol. 1, pp. 63, 64.

<sup>51</sup> "Sitting in the Chamber de Pinct, in the Palace of Westminster, and before the Lords and Commons." Cotton's Abr., p. 556.

<sup>52</sup> *Id.* "On Tuesday, the second day of the Parliament, the Commons presented before the King and Lords *Roger Fowler*, Esq., to be their speaker." *Id.*, p. 557, No. 7.

The statute of this parliament of 7 Hen. V, is in 'Statutes of the Realm.'<sup>53</sup>

In 1420 Henry was betrothed to Katharine of Troyes, May 21; and wedded to her there in the parish church June 2d (or 3d).<sup>54</sup> His campaign in France did not immediately cease.<sup>55</sup>

"The parliament of December, 1420, in which the Duke of Gloucester<sup>56</sup> represented the King, was held in daily expectation of his return."—"A pressing invitation was sent for the King and his bride to visit England. Henry was glad enough to return."<sup>57</sup>

Early in 1421, the King and Queen were escorted to Calais to embark for England; they landed in February;<sup>58</sup> on the 24th she was crowned in Westminster Abbey.<sup>59</sup>

"A great question arose whether if the King's lieutenant, or keeper of his kingdom, under his *teste*, doth summon a parliament, the king being beyond sea, and in the meantime the king return into England, whether the parliament so summoned might proceed; it was doubted that *in præsentia majoris, cessare potestas minoris*, and therefore it was enacted that the parliament should proceed and not be dissolved by the king's return."<sup>60</sup>

The enactment is in the first chapter of the statute of 8 Hen. V (1420).<sup>61</sup>

<sup>53</sup> Vol. 2, pp. 201, 202.

<sup>54</sup> 2 Turner's Engl., ch. 9, edi. 1825, p. 446; Miss Strickland's Queens of Engl., vol. 3, p. 83 and p. 98 of Phila. edi. 1857. Katharine was sister of Isabella, the young widow of Richard II. *Id.*

<sup>55</sup> "With his beautiful bride," he, in two days, "departed from Troyes, to assume the command at the siege of Sens." Their Christmas was spent at Paris. *Id.*, p. 98 to 101.

<sup>56</sup> 3 Stubbs's Const. Hist., ch. 18, p. 90. Gloucester was made lieutenant Dec. 30, 1419, when Bedford joined the King in Normandy. *Id.*, note 3; citing Rymer

ix, 830.

<sup>57</sup> The Parliament opened Dec. 2; Roger Hunt was speaker. 3 Stubbs, p. 90, note 4; citing Rot. Parl. IV, 123.

<sup>58</sup> Miss Strickland's Queens of England, vol. 3, pp. 100, 101; 3 Stubbs, p. 90.

<sup>59</sup> 2 Turner's Engl., ch. 9, edi. 1825, pp. 446, 447. Turner gives an account of 'a sumptuous dinner in the hall.' *Ibid.*

<sup>60</sup> 2 Inst., 26.

<sup>61</sup> 2 Stat. of the Realm, p. 203. The same statute has eleven other chapters, extending to p. 209.

9. *Whether there was a new parliament in May 1421. Henry returned in June to France. In his absence there was a parliament in Dec. 1421. Its action in a suit as to a feoffment in trust. Whether, if there be remedy at the common law, the matter shall be discharged in the chancery. A Prince born in Dec. 1421; the King died in Aug. 1422. Of his administration.*

It may be that although the parliament in session when the King returned to England was not dissolved but did afterwards proceed for a time, yet that a new parliament was called, and met in the spring of 1421. If so, then what is said in the preceding section is consistent with Mr. Stubbs's statement that Henry "after having the Queen crowned and making a great progress through the country, on the 2d of May opened parliament in person."<sup>62</sup>

Henry hurried to France in June (1421), leaving his Queen in the Duke of Bedford's care.<sup>63</sup> He wrote to the Bishop of Durham from the castle of Tonque, August 12;<sup>64</sup> from the town of Caen, Sept. 25;<sup>65</sup> and from beside Meaux, October 29, 1321.<sup>66</sup>

In the Parliament of 9 Hen. V, the first day of December (1321), the bishop of Durham, Chancellor of England, in the presence of John, Duke of Bedford, pronounced touching the Parliament.<sup>67</sup>

"William, lord of Clinton, of Say, complaining, sheweth, how he in trust enfeofed *William de la Pool*, being of his council learned, of all his lands in England and Calais, to the performance of his will, which the said Pool, upon sundry his requests, refused to perform,

<sup>62</sup> 3 Stubbs's Const. Hist., ch. 18, p. 90. In a note Mr. Stubbs mentions that "the Parliament of 1421 opened May 2," and that "Thomas Chaucer was speaker;" citing Rot. Parl. iv, 129.

<sup>63</sup> Miss Strickland's Queens of England, vol. 3, p. 104.

<sup>64</sup> Orig. Letters (published by Sir H. Ellis), 3d series, vol. 1, p. 72 to 74.

<sup>65</sup> To the Bishop of Durham, expressing a desire if there should be a truce

with the Scots this winter, of 1321-2, that his uncle of Exeter might come to him with good help. *Id.*, pp. 74, 75.

<sup>66</sup> To provide the Queen's physician with some benefice. *Id.*, p. 71.

<sup>67</sup> Cotton's Abr., p. 559. On Wednesday, the third day of the Parliament, the Commons presented before the Lieutenant of England and the Lords *Richard Baynard*, to be their speaker." *Id.*, No. 9.



and prayeth remedy; where, upon full proof of the surmise aforesaid, it was enacted, Pool being present, that he should re-enfeoff the said Lord or whom he would, and their heirs forever discharged of all incumbrances, done by the said Pool; the which Pool did, in open Parliament, in two deeds there enrolled."<sup>68</sup>

The "petitions of the Commons, with their answers," embrace the following:

No. 25. "That the exception how that the party hath sufficient remedy at the Common law, shall discharge any matter in the chancery."

"It is enacted to endure unto the next Parliament."<sup>69</sup>

On this subject nothing appears in the statute of this parliament as printed in the volume of statutes.<sup>70</sup> •

In 1321, "on the 6th of December," "Henry of Windsor was born. In May" (1322), "the Queen joined her husband; on the 31st of August he died," "at the castle of Bois de Vincennes, near Paris," in the 34th year of his age.<sup>71</sup>

It has been said that his care in *maintaining justice in his civil administration*, and preserving discipline in his armies, make some amends to both nations" (English and French), "for the calamities inseparable from those wars in which his short reign was almost entirely occupied."<sup>72</sup>

But "a people speedily unlearns compassion, and even *justice*, to those pronounced by the lawgiver to be undeserving of trust. In the reigns of both the Henries considerable numbers suffered death. Sir John Oldcastle, Lord Cobham, was the most conspicuous of the

<sup>68</sup> Cotton's Abr., pp. 559, 560.

<sup>69</sup> *Id.*, pp. 560, 561. Rot. Par., 9 H. V, Nu. 25, is cited in 4 Inst., 83.

<sup>70</sup> 2 Stat. of the Realm, p. 209 to 212. Its fourth chapter is in 1 'Statutes Revised,' ed. 1870, pp. 298, 299.

<sup>71</sup> His body was conveyed to Paris and Rouen, and from Rouen to Calais, whence it was transported to England. The obsequies were performed in presence of Parliament, first in St. Paul's, and then in Westminster Abbey. The interment was near the shrine of Edward, the Confessor. On his tomb the Queen caused to be laid a statue of silver gilt, like him, and as large as life.

Her second husband was Sir Owen Tudor, a Welsh gentleman, said to be descended from the ancient Princes of that country. Of her two sons, the eldest, Edmund, was created Earl of Richmond, the second Earl of Pembroke; 5 Collyer's Engl., ed. 1775, pp. 66, 67; 2 Hume's Engl., pp. 370, 371, of N. Y. ed. 1850; 2 Turner's Engl., book 3, ch. 1, vol. 2d, ed. 1825, p. 465; 5 Lingard's Engl., ch. 1, p. 48 to 50; Miss Strickland's Queens of Engl., vol. 3, p. 108, *et seq.*, of Phila. ed. 1857; 3 Stubbs's Const. Hist., ch. 18, p. 92.

<sup>72</sup> 2 Hume's Engl., ch. 19, p. 370, of N. Y. ed. 1850.

first heretics, or in other words, of the first who preferred death to insincerity, under the new law for *burning* heretics.”<sup>73</sup>

The fifth “Henry degraded his superior mind, and afflicted his nation by abetting the ecclesiastical persecutions. He had *personally attended the burning of one poor man*, whose only crime was an heresy, or a deviation from the then established opinions about the Sacrament”!<sup>74</sup>

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## CHAPTER XXIV.

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### INSTITUTIONS IN THE REIGN OF HENRY VI—1422 TO 1461.

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1. *How the council administered executive power; how officers were appointed. Thomas Langley, bishop of Durham, re-appointed Chancellor. How Parliament was begun and carried on. Its proceedings in 1 H. VI. What it did as to matters in Chancery*

The two paternal uncles of Hen. VI were but a year apart in age: John, duke of Bedford, was thirty-three, and Humfrey, duke of Gloucester, thirty-two at the time of the death of Henry V. By Gloucester, who was then in England, the Great Seal was received, in September, in his nephew's name.<sup>1</sup> The council acted

<sup>73</sup> 1 Mackintosh's Engl., Phila. edi. 1830, p. 296.

<sup>74</sup> 2 Turner's Engl., ch. 9, edi. 1825, pp. 448, 449.

<sup>1</sup> 3 Stubbs's Const. Hist., ch. 18, p. 94 and p. 96.

“Thomas, Bishop of Durham, Chancellor of England to the late King, H. V, in the presence of the Duke of Gloucester and other Lords, in the castle of Windsor, delivered and left with the King the great Golden Seal of the realm of England, whereof he willed them to

be witnesses, and that the same may be enrolled.” Cotton's Abr., p. 563, No. 13.

“The Bishop of London, late Chancellor of the Duchy of Normandy, delivered the same seal of that Duchy at Rome to the Duke of Bedford, who had the governance of the same, and also in the presence as is aforesaid, at Windsor, the Great Seal of England, which King H. V gave to him to keep, and prayeth to be discharged of the same by act of Parliament, and so was.” *Id*, No. 14.

as administrators of executive power. It was by its advice that a commission was directed to Gloucester, authorizing him to begin, carry on and dissolve the parliament by assent of the council.<sup>2</sup> At Westminster, on "Monday next before the feast of St. Martin"<sup>3</sup> (1422), the commission was "read in the presence of the said Duke sitting in the chamber *de pinct*, and before the Lcrds and Commons."

"After which the Archbishop of Canterbury, by the command of the said Duke, the King's Commissary, declared the cause of the said parliament."<sup>4</sup>

"To satisfy the Commons' request, the Duke of Gloucester declared to them that the King had appointed the Bishop of Durham to be his Chancellor;<sup>5</sup> *William Rindroffe*, to be Treasurer of England; and *John Stafford* to be keeper of the Privy Seal: of all which officers, their patents are made and confirmed by Parliament."<sup>6</sup>

<sup>2</sup> 3 Stubbs's Const. Hist., ch. 18, p. 96.

<sup>3</sup> Cotton's Abr., p. 562, No. 1. The feast of St. Martin being Nov. 11, it may be inferred that "Monday next, before the feast," was Nov. 9. 3 Stubbs, 96.

<sup>4</sup> Cotton's Abr., p. 562, No. 2. On the "fourth day of the Parliament the Commons presented" "Roger Flower, Esquire, to be their speaker." *Id.*, p. 563, No. 11.

<sup>5</sup> Cotton's Abr., p. 563, No. 16. By the patent to him the King "grants to him all and all manner of authority and power, to do and execute *vice nomine* and *loco nostris* (in the King's stead, name and place,) all and everything and things which by law or custom belong to the office of Chancellor of England, or at any time have accustomed to belong thereunto, with a command to all his subjects to obey and assist the Chancellor in all things in the exercise of his said office." Legal Judic. in Ch., edi. 1727, ch. 2, pp. 33, 34.

<sup>6</sup> Cotton's Abr., p. 563, No. 16. There may be a misprint in the Treasurer's name. Mr. Foss says of *John Stafford*: He "was the second son of Sir Humphrey Stafford, surnamed (whether from

his generous disposition, or from having an artificial hand, does not appear,) Sir Humphrey of the Silver Hand, and his wife, Elizabeth, daughter and heir of ——— Dynham, and widow of Sir John Maltravers. His brother, Sir Humphrey Stafford, was the ancestor to another Humphrey, who was created Earl of Devon in 9 Edw. IV, a title which he enjoyed only a few months, being beheaded in the same year. (*Baronage I*, 172.) Born at Houke, in the parish of Abbotsbury, Dorsetshire, he was educated at Oxford, and taking his degree in laws, afterwards practised as an advocate in the ecclesiastical courts. There he was advanced to be Dean of the Arches; and in September, 1419, he was collated archdeacon of Salisbury, and was made chancellor of that diocese in 1421. In May, in the latter year, he was in possession of the place of keeper of the Privy Seal, which he retained during the remainder of the reign of Henry V, and was reappointed on the accession of Henry VI, his salary being 20 shillings a day. (Rymer x, 117; Rot. Parl. iv, 171; Acts Privy Council iii, 8.") Biog. Jurid.

"The King, by his Letters patent, confirmed by Parliament, appointeth John, Duke of Bedford, protector and defender of the realm and church of England, and Chief Counsellor of the King, so long as the said Duke (then being beyond the seas) should remain in England; and in his absence only the Duke of Gloucester, to supply the said office; the which Duke of Gloucester, in full parliament, took upon him the burthen aforesaid, with protestation that the same should not redound to the prejudice of the Duke of Bedford."<sup>7</sup>

"That nothing be enacted by council but by six or more at the least, and in all great causes by all or the most; and wherein the King is to be conferred withall, that nothing be therein done without the assents of the Dukes of Bedford and Gloucester."<sup>8</sup>

"Anne, Countess of Stafford, daughter and heir of Ellinor, one of the daughters and heirs of Humphrey de Bohun, late Earl of Hereford, Essex and Northampton, and Constable of England, reciteth a partition made between King H. V and her of the inheritance of the said Earl, in the ninth of his reign, at what time certain Knights' fees in gross were not parted; whereof she now prayeth remedy, and concerning certain members of the castle of Brecknock, in Wales."

*Resp.* "The King's council shall have power, by authority of Parliament to take order herein."<sup>9</sup>

No. 41 of the "Petitions of the Commons, with their answers" is as follows:

"That no man be bound to answer in the Chancery for any matter determinable at the Common Law, on pain of the plaintiff to lose £20."

*Resp.* "The statute made in the 17 R. II shall be executed."<sup>10</sup>

The ordinances and statutes ordained and established in the parliament of 1 Hen. VI (1422), are in 'Statutes of the Realm.'<sup>11</sup>

2. *Parliament of 2 Hen. VI (1423), opened by Chancellor Langley. Its proceedings and statutes.*

At Westminster, in 2 H. VI, "the twentieth day of October" (1423), after there was read the commission "made to Humfrey, Duke of Gloucester, sitting as in the last Parliament," "the Bishop of Durham, being Chancellor of England, by the Duke's commandment, declared the cause of the" Parliament.

"On Friday the 22d of October, the Commons presented before

<sup>7</sup> Cotton's Abr., p. 564, No. 24.

<sup>8</sup> *Id.*, No. 30.

<sup>9</sup> *Id.*, p. 565, No. 34.

<sup>10</sup> *Id.*, p. 566. Rot. Parl., 1 H. VI,

Nu. 41, is cited in 4 Inst., 83. The Statute of 17 R. II is in ch. 20, § 24, *ante*, pp. 695, 696.

<sup>11</sup> Vol. 2, p. 213 to 216.

the Commissary and Lords, *John Russell*, Esquire, to be their Speaker."<sup>12</sup>

The little King who (as stated in ch. 23, § 9, p. 773) was born Dec. 6, 1421, was brought into Parliament on Nov. 18, 1423.<sup>13</sup>

"On Wednesday, the 17th day of December, the Chancellor, by the King's Commissary," "adjourned the Parliament from the same day unto the next after Saint Hilary."

No. 15. "The names of such Bishops, Lords, and other persons as were appointed to be of the King's Council."

16. "All which persons took upon them to be counsellors upon certain articles for the orders touching the council, for *swarving* from the articles in the last parliament (tit. 26 to 34), and much in derogation of the Protector's power."<sup>14</sup>

Of this Parliament (the last day of which was February 18th<sup>15</sup> or 28th<sup>16</sup>), the statutes and ordinances comprise twenty-one chapters;<sup>17</sup> whereof the first is of "liberties confirmed"; the tenth is as to the "Courts of our Lord the King," and is as follows:

"That all the officers made by the King's Letters patents royal within the said courts which have power and authority, by virtue of their offices of old times accustomed, to appoint clerks and ministers within the same courts, shall be charged and *sworn to appoint* such *clerks* and ministers, for whom they will answer at their peril, which be *sufficient, faithful and attending to that which pertaineth* to them in *performance of the business*, as well of the King as of his people."<sup>18</sup>

Ch. 15, against fastening nets in the river Thames was construed in 9 Jac. I.<sup>19</sup>

<sup>12</sup> Cotton's Abr., p. 567.

<sup>13</sup> The chronicler tells how 'he shrieked and cryed and sprang' before he would leave his lodging at Staines." Chron. Lond., p. 112; cited in 3 Stubbs's Const. Hist., ch. 18, p. 99, note 3. He was taken back that night to Staines, and next day to Kingston. Turner's Engl., book 3, ch. 1, vol. 2, ed. 1825, p. 468.

<sup>14</sup> Cotton's Abr., p. 568, Nos. 13, 15 and 16. The opinion of the editor (*William Prynn*) seems to be incorporated in No. 16, and also in the next.

"Amongst all of the articles I find this not the worst; that the clerk of the council should be sworn ever to prefer and to procure the poorest man his bill and answer; and the King's serjeant for counsel to take no money therefor." *Id.*, p. 568, No. 17.

<sup>15</sup> Cotton's Abr., p. 568, No. 14.

<sup>16</sup> 3 Stubbs's Const. Hist., ch. 18, p. 99, note 4.

<sup>17</sup> 2 Stat. of the Realm, p. 216 to 227.

<sup>18</sup> *Id.*, p. 222.

<sup>19</sup> 12 Rep., 99.

Chapters formerly numbered XIII and XIV, are numbered XVI and XVII in 'Statutes Revised.'<sup>20</sup>

3. *Of the King's uncles, Henry and Thomas Beaufort. On July 6, 1424, Thomas Langley, bishop of Durham, retired from, and Henry Beaufort, bishop of Winchester was appointed to, the chancellorship.*

Mr. Foss states that on the death of Henry V, Henry Beaufort, bishop of Winchester, and his brother Thomas, Duke of Exeter, "were appointed governors of the person of the infant king, their great nephew."<sup>21</sup> It may be that only to Henry Beaufort was specially committed "the care of the prince's person and education."<sup>22</sup> But both Henry and Thomas were of the counsellors appointed by parliament to assist the protectors of the realm during the King's minority; and Henry's ascendancy in the council was naturally very great.<sup>23</sup>

In 1424, on July 6th, *Thomas Langley*,<sup>24</sup> bishop of Durham, retired from, and *Henry Beaufort* was, by advice of the council, invested for a third time with the chancellorship.<sup>25</sup>

<sup>20</sup> They (with ch. 1) are in vol. 1, edi. 1870, p. 299 to 302. In connection with ch. 21 there may be reference to Cotton's Abr., p. 568, No. 18, and 1 State Tr. 267, for "proceedings upon an *ex post facto* act against Sir John Mortimer for making his escape from prison."

<sup>21</sup> Biogr. Jurid.

<sup>22</sup> It is said by Collyer of Parliament, or the Council, that "they committed the care of the Prince's person and education to *Henry Beaufort*, Bishop of Winchester." 5 Collyer's Engl., p. 72. Like Collyer, is 2 Hume's Engl., ch. 20, p. 374 (of N. Y. edi. 1850).

<sup>23</sup> Foss's Biogr. Jurid. He never failed in his attendance there; and in February, 1424, he assisted the government by advancing £4,000, afterwards increased to £11,302. 16s. 1d., for which he received certain crown jewels in pledge

for repayment. *Id.* As to which reference may be had to Cotton's Abr., p. 578, No. 16, and p. 579, Nos. 20 and 21.

<sup>24</sup> He was nominated one of the King's council in the parliament at Leicester in Feb., 1426; but, in the following June, he prayed to be excused therefrom on account of his age and infirmities. He occupied the rest of his life in his diocese in works magnificent and charitable, among which were his restoration of the Galilee, in his cathedral built by Bishop Pugar, and the foundation of two schools for grammar and music. He died Nov. 30, 1437. Foss's Biogr. Jurid.

<sup>25</sup> *Id.* His labours being greatly increased by the absence of both the dukes from the kingdom, the council assigned him 2,000 marks *per annum* beyond his accustomed salary. (Acts Privy Council iii, 146, 165.) *Id.*

4. *Parliament of 3 Hen. VI (1425) opened 'before the King sitting in person,' by the Chancellor (Henry Beaufort). Under what circumstances execution of a judgment was stayed.*

In 3 H. VI, the last of April (1425), "at the beginning of the Parliament, before *the King sitting in person in the chair of estate*, in the painted chamber, there being the Lords and Commons, the Bishop of Winchester, Chancellor of England, declared that the King's will was that all estates should enjoy their liberties; and for this theme he took these words, '*Gloria, honor et pax, omni operanti bonum.*'"<sup>26</sup>

May 2 the Commons presented their Speaker; he is mentioned as Sir Tho. *Nanton* in one volume;<sup>27</sup> and Sir Thomas *Wauton* in another.<sup>28</sup>

"Where John, bishop of Ely, in affidavit against John Baldward, of Sutton, and others, recovered 4,000 acres of Marish in Wisbich,

It is enacted that *the execution of the said recovery should stay* unto a certain time, and that before the same time there should be a perambulation made between the shires of Lincoln and Cambridge, by which, if it fell out that any of the premises were within the county of Lincoln, that then neither the said Bishop, nor any of the tenants within the county of Wisbich-hundred, shall claim any common of pasture in any of the same found, and contrarily that the said Baldward and other tenants of Sutton should claim no common in any of the premises found to be within the county of Cambridge."<sup>29</sup>

The ordinances and statutes ordained and established in this parliament of 3 Hen. VI, are in Statutes of the Realm.<sup>30</sup>

5. *In 1425, quarrel between the Duke of Gloucester and the Chancellor. The Duke's brother returns to England. Parliament of 4 Hen. VI (1425-6); called the Parliament of bats or bludgeons. What was done to end the quarrel.*

In 1425 a quarrel between the Duke of Gloucester and the Chan-

<sup>26</sup> Cotton's Abr., p. 576. In his second division, touching sound counsel, he shows "how the Elephant had three properties; the one for that he wanted a gall; the second, for that he was inflexible, and could not bow; the third, for that he was of a most sound and perfect memory; the which properties, by application, he wished to be in all counselors. First, that wanting a gall, they should thereby be free from all malice,

rancor and envy; by being inflexible, that they should worship no reward, nor in judgment respect any person; of a ripe memory, that they, by remembering perils past, might prevent dangers to come." *Id.*, p. 577.

<sup>27</sup> Cotton's Abr., p. 577.

<sup>28</sup> 2 Stubbs's Const. Hist., p. 100, note 6.

<sup>29</sup> Cotton's Abr., p. 579, No. 22.

<sup>30</sup> Vol. 2, pp. 227, 228.

cellor caused the Duke of Bedford to return to England on the receipt of a letter of Oct. 31, from the Chancellor. Bedford landed at Sandwich on Dec. 20, and came to London. The two brothers (Bedford and Gloucester) had not met since the death of Henry V. On Jan. 7, a summons was issued for parliament. Three weeks were spent in an attempt to reconcile Gloucester with the Chancellor. The matter was not settled before the meeting of the parliament, which is called by annalists the parliament of bats or bludgeons."<sup>31</sup>

In this Parliament of 4 Hen. VI, on Feb. 18 (1425-6), "*before the King sitting in person, in the great hall of the Castle of Leicester,*" "the Bishop of Winchester, Chancellor of England, declared" the King's will.

8. "The King appointeth by his Letters patent, John, Duke of Bedford, his Commissioner to prorogue and dissolve the Parliament."

9. Feb. 28, "the Commons presented before the King *Richard Vernon*, Knight, to be their Speaker."

10. "Upon the Commons misliking of the dissention between the Nobles, the Duke of Bedford, and other Bishops and Lords made among themselves a solemn decree that every of them should, without affection, hear and end the dissention between the Duke of Gloucester and the Bishop of Winchester, so as neither of them should be encouraged to break the peace. To which order, after every of the Lords were sworn, they sent the copy thereof to the Commons."<sup>32</sup>

12. "The variance between the Duke of Gloucester and the Bishop of Winchester, by their formal instruments, is compromitted to certain Bishops and Lords, who, by like formality, make a full order between them, viz: that the Bishop should first submit himself to the King, which he did: whereupon the Duke of Bedford, in open Parliament, by the King's commandment, pronounced the said Bishop excused, as well of that it was said that the said Bishop had procured one to have murdered the King, being Prince, as the murderer confessed, who was therefore drowned by the Earl of Arundell, as also of that it was said that the said Bishop should counsel and have procured H. V, being Prince, to have deprived H. IV, his father."

13. Besides that, they awarded that the said Bishop should ac-

<sup>31</sup> 3 Stubbs's Const. Hist., ch. 18, pp. 101, 102. "That no angry conflict might take place, its members were ordered to leave their swords and weapons at their inns. To evade this injunction, their followers attended with great bats and staves on their necks, which occasioned the meeting to be nicknamed the Parliament of Batts." Turner's Engl., book 3,

ch. 3, p. 484, of vol. 2, edi. 2, (1825.) Turner says: "These being also prohibited, so determined was their mutual animosity and distrust, that they provided themselves with stones and plummets of lead, and trussed them secretly in their sleeves and bosoms." *Id.*; citing Hall's Chron., p. 131-133.

<sup>32</sup> Cotton's Abr., p. 582, 583.



knowledge to the said Duke of Gloucester an offence, and by his submission to pray his favour, and that the Duke should promise the same; and that in token thereof, either of them should take the other by the hand, which was done.”<sup>33</sup>

6. In March, 1425-6, Henry Beaufort resigned the Great Seal; John Kemp, Bishop of London, became Chancellor; in April elected Archbishop of York. *Proceedings of Parliament.*

That which is mentioned in the last paragraph (or No.) of the preceding section was on the 12th of March.<sup>34</sup>

“On the 14th (or 13th) Beaufort resigned the Great Seal,<sup>35</sup> and the treasurer, Bishop Stafford,<sup>36</sup> prayed to be discharged of the treasurer-ship, John Kemp, Bishop of London, became chancellor, and Walter, Lord Hungerford, treasurer.”<sup>37</sup>

Mr. Foss gives of John Kempe, bishop of London, the subjoined account,<sup>38</sup> and states that he was raised to the chancellorship March 16, 1426.

<sup>33</sup> Cotton's Abr., pp. 583, 584; 1 State Tr., p. 268 to 271. Mr. Stubbs says: “The charges of Gloucester against his uncle were stated: he had shut the Tower of London against him; had purposed to seize the King's person; had plotted to destroy Gloucester when visiting the King; had attempted the murder of Henry V., when Prince of Wales, and had urged him to usurp his father's crown. The Bishop explained his conduct as impugned in the first and third charges, and denied the truth of the rest. The arbitrators determined that Beaufort should solemnly deny the truth of the charges of treason against Henry IV, Henry V., and Henry VI, whereupon Bedford should declare him loyal: he should then disavow all designs against Gloucester, who should accept the disavowal, and they should then take each other by the hand.”

3 Const. Hist., ch. 18, pp. 103, 104.

<sup>34</sup> 3 Stubbs's Const. Hist., ch. 18, p. 104.

<sup>35</sup> *Id.* In Cotton's Abr., p. 584, No.

14 is in these words: “The thirteenth day of March the Bishop of Winchester, for sundry causes, prayeth to be discharged of the Great Seal, whereof, by common consent, he was discharged.”

<sup>36</sup> 3 Stubbs, p. 104. Of *John Stafford*, mentioned in § 1, p. 775, Mr. Foss, says: “In December, 1422, he succeeded William Kynwelmarsh, both as dean of St. Martin's, London, and in the high office of treasurer of England. (Monasticon vi, 1324.) The former he probably gave up on his becoming dean of Wells on Sept. 9, in the following year; the latter he retained till March 13, 1426, when he resigned it. Elected Bishop of Bath and Wells on May 12, 1425, he was named as one of the lords of the council during the king's minority, and was most regular in his attendance in its meetings.” Biogr. Jurid.; Cotton's Abr., p. 584, No. 15.

<sup>37</sup> 3 Stubbs, p. 104.

<sup>38</sup> Descended from a good family, which had been long in possession of the estate of Ollantigh, in the parish of Wye,

In Cotton's Abr., p. 584, are the following:

16. "The eighteenth of March, John, bishop of Bath and Wells, late Treasurer of England, by a writ of the privy seal delivered to the Duke of Bedford, the King's Great Seal of Gold in a leather bag, the which the Duke took, and shewed openly and so sealed with his own seal and after delivered the same to John, Bishop of London, Chancellor of England."

21. "It is enacted that the King's Council, by authority of parliament, shall have power to end all such bills as are not ended by parliament."

23. "The twentieth day of March, before the Lords and Commons, the Bishop of London, Chancellor of England, by the King's Commissary's commandment, prorogued the parliament from the same day unto the Monday next after the feast of St. George,<sup>39</sup> at Leicester aforesaid."

In 1426, John Kempe, bishop of London and Chancellor of England, was, on April 8, elected Archbishop of York.<sup>40</sup> On the 1st of June the Parliament separated.<sup>41</sup> Of its ordinances and statutes<sup>42</sup> ch. 3 is in 1 'Statutes Revised.'<sup>43</sup>

in Kent, where he was born in 1380. He was the youngest son of Thomas Kempe and Beatrice, a daughter of Sir Thomas Leuknor, and received his education at Merton College, Oxford, of which he became a fellow. Practising in the ecclesiastical courts, he was one of the counsellors called upon by Thomas Arundel, archbishop of Canterbury, to assist in the proceedings against Sir John Oldcastle in 1413. (1 State Trials, 242, 262.) In July, 1415, he was an ambassador to negotiate a peace with the King of Arragon, and to treat for a marriage with his daughter. (Rymer ix, 295.) In that year also he was appointed dean of the arches and vicar-general of the new archbishop Chicheley. He was soon archdeacon of Durham; and, in 1418, was elected Bishop of Rochester. In the next April Henry V made him keeper of his Privy Seal, and within two years he was placed in the office of chancellor of the Duchy of Normandy, which

he retained till the end of that reign. After sitting at Rochester for about two years, he was, in 1421, on Feb. 28, removed to Chichester, and on November 17 translated to the bishopric of London. On the accession of Henry VI, he delivered up the seal of the Duchy of Normandy, and was appointed one of the King's council. (Rot. Parl. iv, 171, 201.) He was sent to the Duke of Bedford in France, and was employed to treat for the release of the King of Scots. (Acts Privy Council iii, 86, 137.) Biogr. Jurid.

<sup>39</sup> The feast of St. George is April 23. The Monday next after that feast may have been (in 1426) the 29th of April. 3 Stubbs's Const. Hist., ch. 18, p. 104.

<sup>40</sup> Foss's Biogr. Jurid.

<sup>41</sup> 3 Stubbs's Const. Hist., ch. 18, p. 104.

<sup>42</sup> In 2 Stat. of the Realm, p. 229 to 232.

<sup>43</sup> Edi. 1870, p. 302 to 304.

7. *In 1427, January, death of the ex-Chancellor, Thomas Beaufort; council held by the Duke of Bedford; views of Chancellor Kemp and of Bedford and his brother.*

The ex-Chancellor, Thomas Beaufort, Duke of Exeter (mentioned in ch. 23, § 6, p. 768), after being employed during four years as one of the councillors appointed by parliament to assist during the King's minority, and in acting in the war against France, and adding to his other honors the office of Justice of North Wales, died at his manor of Greenwich on Jan. 1, 1427.<sup>44</sup>

The brothers, who had been chancellors, had in Chancellor *Kemp*, a successor, who 'was a resolute defender of constitutional right.'

"In contemplation of his return to France, Bedford held a council in the Star Chamber on the 28th of January. The chancellor, as spokesman of the council, addressed him" ———; reminded him that the execution of the King's authority was "in especial in the lords of his council, who might be called to account for their administration; not in one singular person, but in all my lords together, except where the parliament had given definite powers to the protector."—"Bedford replied that it was his wish to act in all things under advice and governance of the council; and then, with tears in his eyes, swore on the gospels that he would be counselled and ruled by them. On the following day the chancellor and council, thus fortified with a precedent, visited Gloucester."—"The council hoped that he would give them the same answer that they had from Bedford; and in fact Gloucester, after some words of apology, repeated his brother's declaration."

On the 8th of March the King, with Bedford, Beaufort and the Council, were at Canterbury. Immediately afterwards Bedford left (for France). "Beaufort accompanied him."<sup>45</sup>

<sup>44</sup> And was interred in the abbey of St. Edmund's Bury, where 345 years afterwards (in 1772), among the ruins, was discovered a leaden coffin (which had been enclosed in an oaken case) containing an embalmed body entire as at the time of interment; and "the features, the nails of the fingers and toes, and the hair which was brown, with some mixture of gray, appeared as perfect as ever." The remains, on being ascertained to be those of Thomas Beaufort,

"were enclosed in a strong oaken coffin and buried at the foot of the large north-east pillar, which formerly assisted to support the belfry." 1 Dugdale's Engl. and Wales, p. 325; London *Times*, Oct. 19, 1841; Foss's Biogr. Jurid.

<sup>45</sup> Stubbs's Const. Hist., ch. 18, p. 104 to 106. During Bedford's stay in England, Henry Beaufort had appeared from time to time at the council board. *Id.*, p. 104.

8. *In 6 Hen. VI (1427), Parliament opened by Chancellor Kemp II. How bills and petitions were left to be ended in some cases by the council, in other cases by the Chancellor.*

In 6 Hen. VI, "in the Quindene of St. Michael (1427), being the thirteenth day of October, *before the King*, sitting in the Chamber *de pinct*," "John, Archbishop of York, being Chancellor of England, declared the cause of the Parliament."<sup>46</sup>

8. On Octo. 15, "the Commons presented before the King and Lords *John Terrill*, Esq., to be their Speaker."

9. "The Chancellor, by the appointment of the Duke of Gloucester, to whom the King's Letters Patents were made for proroguing the Parliament, did the same prorogue from the eighth day of December until the Quindene of St. Hilary then ensuing."

15. "John Multon and Henry Heart, executors of the last will and testament of John Harris, of Cambridge, pray remedy against one John Colls, *their executor*<sup>47</sup> for misusing himself; the *which matter is committed to the Chancellor to be ended*."

Nos. 22, 23, 24 and 25 are upon Gloucester's proceeding to understand 'what the power of the Protector was.'<sup>48</sup> At the end of the "Petitions of the Commons, with their answers," is this:

45. "It is enacted that the Lords of the council shall have power to end all petitions not ended by parliament, by the advice of the Justices."<sup>49</sup>

The statutes and ordinances made in this Parliament of 6 Hen. VI (1427) are in six chapters;<sup>50</sup> whereof the first is in 1 'Statutes Revised';<sup>51</sup> the fifth (for the chancellor to make during ten years 'commissioners of sewers') was amended by statute of 8 Hen. VI, ch. 3.<sup>52</sup>

9. *In 1428, preceptor of Hen. VI. Position of Henry Beaufort. Parliament opened in 8 Hen. VI (1429) by Chancellor Kemp. Henry crowned Nov. 6. Henceforth the Dukes of Bedford and Gloucester have not the name and power of Protector, but are only councillors. Effect of Beaufort's being cardinal.*

"Henry V had directed that the Earl of Warwick should be the

<sup>46</sup> Cotton's Abr., p. 587.

<sup>47</sup> So printed in *Id.*, p. 588.

<sup>48</sup> *Id.*, p. 589. Chancellor Kemp "was one of the peers who signed the answers to the Duke of Gloucester, resisting his claim to govern at his own will and pleasure, and explaining the limitation of his authority as protector." (Rot. Parl. iv, 327.) Foss's Biogr. Jurid.

<sup>49</sup> Cotton's Abr., p. 591. "Whereof sundry bills and petitions, the 25th day of June were, by certain of the Lords there named, in the Star Chamber, answered and endorsed." *Id.*

<sup>50</sup> 2 Stat. of the Realm, p. 232 to 238.

<sup>51</sup> *Id.* 1870, pp. 304, 305.

<sup>52</sup> 2 Stat. of the Realm, pp. 239, 240.

preceptor of his son. On the 1st of June" (1428) "Warwick was summoned by the Chancellor to perform his office; special instructions are given him."<sup>53</sup>

Beaufort "did not return until September, 1428, having, in the meantime been made a cardinal, legate of the apostolic See, and commander of a crusade against the Hussites."<sup>54</sup>

In 8 Hen. VI, "John, Archbishop of York and Chancellor of England," declared the cause of the Parliament in September.<sup>55</sup>

At Westminster, on the 6th of November, was performed the ceremony of crowning Henry VI King of England.<sup>56</sup>

In Parliament, in December, "For that the King, the sixth day of November in this present year, on the day of coronation, had taken upon him the protection and defence of this realm, it seemeth good to the Bishops and Lords, upon good advice, that the name and power of Protector and Defender, granted to the Dukes of Bedford and Gloucester, should, from the same day of coronation, utterly cease, and that they, the said Dukes, should have the name of principal counsellors, any order to the contrary notwithstanding: the which name of Protector and Defender, as touching his own person, the Duke of Bedford, in full Parliament, did release, so always as the same should not hurt the title of the Duke of Bedford."<sup>57</sup>

In January<sup>58</sup> "For that no cardinal is to be of any King's council

<sup>53</sup> 3 Stubbs's Const. Hist., ch. 18, p. 108 "Warwick who lived to attend on Henry until he was eighteen, discharged his duties faithfully, and made his pupil a good scholar and an accomplished gentleman. He could not make him a strong or a happy man." *Id.*

<sup>54</sup> *Id.*, p. 106. Mr. Stubbs observes that "Beaufort had made the great mistake of his life, in 1426, in accepting the cardinalate." *Id.*, p. 108.

<sup>55</sup> "On Thursday, being the next day after St. Matthew, the twentieth day of September, before the King himself, then sitting in the Chair of Estate, in the Chamber *de pinct*, the Lords and Commons being there present." Cotton's Abr., p. 591, No. 1. Afterwards *William Allington* was chosen and presented as speaker of the Commons. *Id.*, p. 592, Nos. 9 and 10; 3 Stubbs's Const.

Hist., p. 110, note 3.

<sup>56</sup> 3 Stubbs's Const. Hist., ch. 18, p. 110. Dainties of the coronation banquet are commemorated. (—"1st course," "2d course," "3d course"—). Turner's Engl., vol. 3, ch. 10, pp. 3, 4, of 2d ed. (1825.) There seems to have been something else of a different sort. "The second ballad of the coronation dinner was" "to applaud the emperor Sigismund and Henry V for their persecutions of heresy;" it was "followed by the *burning* of a heretic" (Jan. 23), "and in the next year another." 3 Turner's Engl., ch. 10, p. 13, of 2d ed. (1825).

<sup>57</sup> Cotton's Abr., p. 592, No. 13.

<sup>58</sup> Parliament was prorogued from Dec. 20 (or 29) 'unto the Monday next after the feast of St. Hilary.' Cotton's Abr., p. 593, No. 16.

but at his own pleasure, the Bishops and Lords assented that humble request should be made to the said Cardinal, to vouchsafe to be made of the council, with this protestation that the said Cardinal should absent himself in all affairs and councils of the King, wherein the Pope or See of Rome was touched upon; which request so made, the Cardinal took upon him the same, in form aforesaid."<sup>59</sup>

The statutes and ordinances made in this Parliament of 8 Hen. VI (1429) are in twenty-nine chapters;<sup>60</sup> whereof chapters 1, 7, 9, 10, 12, 15 and 16 are in 1 Revised Statutes.<sup>61</sup>

10. *The King, accompanied by Cardinal Beaufort, went to France. Gloucester lieutenant and custos of the kingdom. How Chancellor Kemp acted. William Linwood, Doctor of the Law, opened Parliament in 9 Hen. VI. Its statutes.*

After the reverses produced by the Maid of Orleans<sup>62</sup> it was recommended that Henry should be crowned, in person, the King of France.<sup>63</sup> In 1430, on April 16, Cardinal Beaufort "agreed to accompany his grand-nephew" thither; "on the 21st Gloucester was appointed lieutenant and custos of the kingdom"; on the 23d Henry sailed with a large retinue.<sup>64</sup>

"During Henry's absence the duty of maintaining the authority of the council devolved on Archbishop *Kemp*, who, although he managed to act with Gloucester in his new capacity as *custos*, had on more than one occasion to oppose him."

Beaufort returned to England Dec. 21, 1430; leaving Henry in France.<sup>65</sup>

In Parliament, in 9 Hen. VI, on "the Friday next before the feast of St. Hilary," "being the 12th day of January" (1430-31), "the noble Prince Humfrey, Duke of Gloucester, being Keeper of Eng-

<sup>59</sup> *Id.*, No. 17. The twenty-third of February was the last day of the Parliament. *Id.*, No. 26.

<sup>60</sup> 2 Stat. of the Realm, p. 238 to 262.

<sup>61</sup> *Id.*, 1870, p. 305 to 320.

<sup>62</sup> Mr. Turner has written chapters entitled "The Siege of Orleans;" "The Rise of Joan of Arc;" "The Maiden Raises the Siege of Orleans;" "Her further military exploits and capture;"

"Her examination, trial and death." These chapters are the 4th, 5th, 6th, 7th, 8th and 9th, in book 3, and occupy in vol. 2 100 pages (494 to 594) of Turner's *Engl.*, ed. 2, (1825.)

<sup>63</sup> *Id.*, vol. 3, ch. 10, p. 7.

<sup>64</sup> 3 Stubbs's *Const. Hist.*, ch. 18, p. 112.

<sup>65</sup> 3 Stubbs's *Const. Hist.*, ch. 18, p. 112 and p. 113, note 6.

land, sitting in royal estate in the Chamber *de pinct*, many the Lords him there assisting, and the Commons being there present, for that John, Archbishop of York, Chancellor of England (who, by virtue of his office ought to have declared the cause of the said parliament, by grievous sickness was unable to do the same) the said Duke appointed *William Linwood* (Doctor of the Law) to do the same.”<sup>66</sup>

Fuller says:

“William Lynwood was born at Lynwood in” Lincolnshire “and proceeded Doctor of the Laws (probably rather by incorporation than constant education) in Oxford, long living a commoner in Gunvil Hall, in Cambridge. He was chancellor to the archbishop of Canterbury, keeper of the Privy Seal to King Henry the Sixth, and was employed in several embassies into Spain and Portugal. He wrote a learned comment on the English provincial constitutions, from Stephen Langton to Archbishop Chichley.”<sup>67</sup>

Since Fuller's time another has said of Lyndwode:

“In the *Provinciale* and the Gloss upon it, we not only have a view of such constitutions as were made in this kingdom, with the interpretation put on them by that experienced practiser and judge, but we collect from him that the oracle to which recourse was had in all cases where our constitutions were defective or doubtful was the body of pontifical canon law.”<sup>68</sup>

The statutes and ordinances made in this Parliament of 9 Hen. VI are in eleven chapters:<sup>69</sup> whereof the fourth is in 1 ‘Statutes Revised.’<sup>70</sup> The ninth chapter (for the chancellor to assign commissioners to remove obstructions in the river Ley) and the eleventh (of proceedings in chancery when bastardy is alleged) furnish illustrations of the variety of matters within the chancellor's jurisdiction at that period.

<sup>66</sup> Cotton's Abr., p. 597, No. 1. On Jan. 15 the Commons presented *John Tirrell*, Esquire, to be their speaker. *Id.*, p. 598, No. 10.

<sup>67</sup> “And his pains at last were rewarded with the bishopric of St. David's, where he died in 1446.” 2 Fuller's

Worthies, edi. 1840, pp. 273, 274. Of him more may be read in ch. 29, § 5.

<sup>68</sup> Reeves's Hist. of Engl. Law, ch. 25, edi. 1869, p. 43.

<sup>69</sup> 2 Stat. of the Realm, p. 263.

<sup>70</sup> Edi. 1870, pp. 321, 322.

11. *In 1431, proceedings of Gloucester in England and of Beaufort in France. Henry, who there in December was crowned King of France, returned to England in February, 1432. The Great Seal resigned by Kemp; and delivered to John Stafford.*

In 1431 Beaufort went back to France after Easter;<sup>71</sup> in his absence Gloucester took steps against him in the council in November. Yet "on the 17th of Dec., 1431, Henry was crowned king of France at Paris by Beaufort." In 1432 the King landed in England on Feb. 9. Before his return there had been, in the council, contests disagreeable to the chancellor;<sup>72</sup> he disapproved certain removals from office,<sup>73</sup> though made after the King's return. On Feb. 25, the Great Seal was resigned by Kemp; on March 4 it was transferred to the hands of *John Stafford*.<sup>74</sup> Beaufort returned home in time to attend parliament.

12. *Parliament opened in 10 Hen. VI (1432) by Chancellor Stafford; its proceedings.*

In 10 Hen VI, on May 12 (1432),<sup>75</sup> "John, bishop of Bath and Wells, being Chancellor of England, by the King's commandment declared the cause of the Parliament."

9. "The second day of the Parliament, the Duke of Gloucester declared to the bishops and Lords" "that although he were principal counsellor, yet would he do nothing without the assent of most of

<sup>71</sup> 3 Stubbs's Const. Hist., ch. 18, p. 113, note 6.

<sup>72</sup> *Id.* (3 Stubbs), pp. 112, 113, 114; 5 Lingard's Engl., ch. 2, p. 91. On Nov. 28 there was a brisk debate on the question of the protector's salary, in which Kemp and Hungerford (the Chancellor and Treasurer) were supported by the Bishop of Carlisle, Lords Harrington, De la Warr, Lovell and Botreaux; and outvoted by Gloucester's friends, led by the Lord Scrope. 3 Stubbs, p. 113, and note 5.

<sup>73</sup> On Feb. 26, Hungerford had to resign the treasurership to Scrope; on March 1, Lord Cromwell, the Chamberlain, was dismissed, and Lord Tiptoft

was relieved from the stewardship of the household. *Id.*, p. 114.

<sup>74</sup> Mentioned in § 1, p. 775, and § 6, p. 781. By a MS. letter in the British Museum, addressed to him on July 11, 1428, it seems that he had resumed his former office of keeper of the Privy Seal. In 1430 he accompanied the King to France, and had a salary as one of his counsellors there. (Acts Privy Council iii, 310; iv, 29.) Foss's Biogr. Jurid.

<sup>75</sup> "In the presence of the King himself, sitting in the Chair of Estate in the Chamber *de Pinct*, within the palace of Westminster, the Lords and Commons being there also present." Cotton's Abr., p. 601.



them; the which unity of the Lords was the next day declared to the Commons by the Chancellor."

10. May 14, "the Commons presented before the King *John Russell*, Esquire, to be their Speaker."

14. "The Cardinal in full Parliament, declareth that he being in Flanders in the way to Rome, returned back into the realm of his own will, to purge himself of a bruit that he should be a traitor to the realm; whereof the Duke of Gloucester, by the King's commandment, purged him."

16. "The King, by the common assent of all the estates pardoneth to the said Cardinal all offences, punishments and pains incurred by him against the statutes of Provisors."<sup>76</sup>

Of the statutes and ordinances made in this Parliament of 10 Hen. VI,<sup>77</sup> chapters two and six are in 1 'Statutes Revised.'<sup>78</sup>

*13. Mastership of the Rolls in this reign until May 13, 1438.*

*John Wakering*, who (as stated in ch. 23, § 5, p. 767) retired from the Mastership of the Rolls June 3, 1415, was on the accession of Henry VI named as one of the special council to assist the protectors. His services were terminated by his death, April 9, 1425, at his manor of Thorpe. He was buried at Norwich in his cathedral; and is spoken of as of extraordinary merit.<sup>79</sup>

*Simon Gaunsted*, who under Hen. V succeeded to the Mastership of the Rolls June 3, 1415 (p. 767), "held it again under Hen. VI, from Sept. 28, 1422, till Nov. 16, when he was recognized as an independent keeper with all the usual powers, and received the accustomed salary."<sup>80</sup> He probably died soon after.

*John Frank*<sup>81</sup> was on Octo. 28, 1423, constituted keeper of the Rolls in Chancery. The Great Seal was by him received in April,

<sup>76</sup> *Id.*, pp. 602, 603. No. 15 is of jewels stayed at Sandwich to the great hindrance of the Cardinal.

<sup>77</sup> 2 Stat. of the Realm, p. 272 to 277.

<sup>78</sup> *Edi.* 1870, p. 323 to 326.

<sup>79</sup> "Pious, bountiful and affable, and governing his See with prudence and moderation." *Foss's Biogr. Jurid.*

<sup>80</sup> *Rymer* x, 262, is cited in *Biogr. Jurid.*

<sup>81</sup> Of a Norfolk family. He was probably son of John Frank, of Norwich, and Alice; his wife. (*Acts Privy Council* ii, 149.) He was a clerk, or Master in Chancery in 2 Hen. V (1414), in which reign he was also clerk of the Parliament, receiving £40 a year as his salary for that duty (*Id.*, 106). He was collated archdeacon of Suffolk Nov. 10, 1421 (*Le Neve* 221). *Foss's Biogr. Jurid.*

1433, by virtue of a writ directed to him,<sup>82</sup> but was re-delivered to the Chancellor in a few weeks.<sup>83</sup> He held the office of Master of the Rolls till May 13, 1438.<sup>84</sup>

14. *John Stafford, the first person known to have been called 'Lord Chancellor,' opened parliaments from 1432 to 1437. In the latter was the statute of 15 Hen. VI, c. 4, against writs of sub-pœna for matters determinable by the common law.*

John, bishop of Bath and Wells, is said to be "the first possessor of the office" (of Chancellor of England) "who is known to have been called 'lord chancellor.'" <sup>85</sup> He declared the cause of the Parliament at Westminster the eighth day of July, in 11 Hen. VI (1433).<sup>86</sup> The statutes, declarations and ordinances of this parliament are in sixteen chapters;<sup>87</sup> whereof the sixth is in 1 'Statutes Revised.'<sup>88</sup>

<sup>82</sup> Wherein the King recites, "that the Chancellor was to go to Calais about the public business, but we being willing that justice and execution of the laws, customs, or statutes of our kingdom of England should not be thereby retarded, but rather, in the meantime, full justice should be done to every one willing to sue in our Chancery, have willed and commanded our Chancellor to deliver our Great Seal for the time of such his absence into your hands, to be kept till his return, to the end that you, in his absence, may occupy that Seal, and may do and execute the matters of justice and the course of our Chancery, as is fitting; and therefore we command you that you receive our Seal from the Chancellor, and, in the meantime, occupy it to that use, and to do other the premises in the form aforesaid, and to re-deliver the said Seal to our Chancellor upon his return." Legal Judic. in Ch., p. 36, edi. 1727, ch. 2, p. 36.

<sup>83</sup> The writ bears teste 15 April, anno 11, H. VI. The Chancellor was absent about five weeks, viz: to the 23 of May

following; and then the Keeper of the Rolls re-delivered the Seal to the Chancellor. *Id.*; citing Rym. Fœd., 10 Tom., 549.

<sup>84</sup> By his will, he bequeathed £1,000 to purchase lands for the maintenance of four fellows of Oriel College, Oxford, from Somerset, Dorset, Wilts and Devon. Foss's Biogr. Jurid.

<sup>85</sup> Foss's Biog. Jurid.

<sup>86</sup> "In the presence of the King, then sitting in the Chair of State, in the Chamber *de Pinet*, and of the Dukes of Bedford and Gloucester, Bishops, Lords and Commons." *Roger Hunt, Esq.*, was Speaker of the Commons. Cotton's Abr., p. 607.

<sup>87</sup> 2 Stat. of the Realm, p. 278 to 288. This Parliament was after Bedford had lost one wife and married another. About the end of June, 1434, he sailed for France. At Rouen, in 1435 he died Sept. 14, and was buried in the cathedral on the right hand of the high altar. 5 Lingard's Engl., ch. 2, p. 92 to 95; 3 Stubbs, ch. 18, pp. 120, 121.

<sup>88</sup> Edi. 1870, pp. 327, 328.

Chancellor Stafford declared the cause of the Parliament at Westminster the tenth day of October, in 14 Hen. VI (1435).<sup>89</sup>

Also the cause of the Parliament at Westminster the 21st of January, in 15 Hen. VI (1437).<sup>90</sup> Its statutes and ordinances<sup>91</sup> comprise eight chapters; whereof the fourth is as follows:

"For that divers persons have, before this time, been greatly vexed and grieved by writs of *subpœna* purchased for matters determinable by the common law of this land to the great damage of such persons so vexed, in subversion and impediment of the common law aforesaid, our Lord the King doth command that the statutes thereof made shall be duly observed according to the form and effect of the same, and that no writ of *subpœna* be granted from henceforth until surety be found to satisfy the party so grieved and vexed, for his damages and expenses, if so be that the matter cannot be made good which is contained in the bill."<sup>92</sup>

15. *Of Chancellor Stafford and the parliaments and statutes in 1439 and 1441-2. In 1443 he was elected archbishop of Canterbury, and became apostolic legate. In 1444 the King, by proxy, married Margaret.*

Chancellor *Stafford* declared the cause of the Parliament at Westminster in 18 Hen. VI, "the morrow after St. Martin,"<sup>93</sup> (1439). Of its statutes and ordinances<sup>94</sup> the first, sixth and seventh chapters are

<sup>89</sup> "In the presence of the King, sitting in the Chair of Estate, in the Chamber *de Pinet*, and in the presence of the Lords and Commons." *John Bowes*, Esq., was Speaker of the Commons. *Cotton's Abr.*, p. 614. The statutes and ordinances of this Parliament are in 2 Stat. of the Realm, p. 289 to 294. Chapter 1 is in 1 'Statutes Revised,' ed. 1870, pp. 328, 329.

<sup>90</sup> "In the presence of the King, Lords and Commons. For Speaker of the Commons Sir *John Tirrell*, Knight, was first chosen. But after, by grievous sickness, he could not attend, *William Beerly*, Esq., was chosen. *Id.*, p. 617, No. 1 to 5; 618, No. 10; 619, No. 27.

Before this Parliament began, Queen Katherine (the King's mother) had died Jan. 3. *Id.*, p. 620, No. 32; 3 Stubbs, p. 124.

<sup>91</sup> 2 Stat. of the Realm, p. 295 to 300.

<sup>92</sup> 2 Stat. of the Realm, pp. 296, 297. Cited in 4 Inst., 83, and 2 Reeves' Hist. of Eng. Law, ch. 22, ed. 1869, p. 600.

<sup>93</sup> "In the presence of the King, Lords and Commons." *Cotton's Abr.*, p. 621. The day of St. Martin, Bishop and Confessor, being Nov. 11, this Parliament began Nov. 12. The Commons presented William Tresham, Esq., to be their speaker. *Id.*, p. 622.

<sup>94</sup> In 2 Stat. of the Realm, p. 301 to 315.

in 1 "Statutes Revised."<sup>95</sup> As to commissioners of sewers in relation to whom power was given the chancellor by stat. 6 Hen. VI, ch. 5 (mentioned in § 8, *ante* p. 784), the time is extended ten years by ch. 10.<sup>96</sup>

Of statutes and ordinances made in the Parliament of 20 Hen. VI (1441-2),<sup>97</sup> the ninth chapter is in 1 'Statutes Revised.'<sup>98</sup>

Chancellor Stafford was, on May 15, 1443, elected Archbishop of Canterbury,<sup>99</sup>

In 1443, or 1444, William de la Pole, earl of Suffolk, was entrusted with a negotiation in France connected with which was a treaty for marriage between Henry the Sixth and Margaret, daughter of René, King of Sicily.<sup>100</sup> Henry, in a letter of August 17th, mentions having sent our right trusty and right well beloved cousin,<sup>101</sup> the earl of Suffolk, "our right well beloved clerk Maist. *Adam Moleyns*, doctor of law, dean of Salisbury, keeper of our privy seal, and other with them." Sir *Henry Ellis* seems to suppose that this letter and another of August 28, from Hen. VI, were in 1443.<sup>102</sup> But elsewhere, there is mention of October 28, 1444, as the date of Henry's letter consenting to the engagement, and November 1444, as the month in which at Nanci, in St. Martin's church, Suffolk "espoused the lady Margaret in the name and as the proxy of his sovereign, Henry VI of England."<sup>103</sup>

<sup>95</sup> Edi. 1870, p. 329 to 333. Ch. vii, as to escheats, provides "that the Chancellor of England call to him the Treasurer of England in letting such fermes."

<sup>96</sup> 2 Stat. of the Realm, pp. 308, 309, Afterwards the time was further extended by Stat. 23, Hen. VI, ch. 8, p. 334.

<sup>97</sup> Jan. 25. 2 Stat. of the Realm, p. 315 to 325.

<sup>98</sup> Edi. 1870, pp. 333, 334.

<sup>99</sup> About the same time he was appointed apostolic legate in England. Foss's Biogr. Jurid.

<sup>100</sup> And Jerusalem, and Duke of Anjou,

Maine and Bar. 4 Lingard's Engl., ch. 2, p. 119.

<sup>101</sup> Suffolk's wife was Alice, widow of the Earl of Salisbury, and daughter of Thomas Chaucer of Ewelme, whose mother was sister to Katharine Swinford." 3 Stubbs's Const. Hist., ch. 18, p. 140, note 2.

<sup>102</sup> Sir H. Ellis's 3d series of Orig. Let., vol. 1, p. 78 to 82.

<sup>103</sup> Miss Strickland's Queen's of Engl., vol. 3, p. 132, of Phila. edi. 1857; citing Rymer's *Fœdera* and other authorities.

16. In 23 Hen. VI (1444-5) Chancellor Stafford in opening Parliament announced a treaty for peace with France and for marriage with Margaret. The marriage solemnized April 22, 1445, in Titchfield Abbey; the Queen crowned at Westminster May 30.

At Westminster in 23 Hen. VI, on Feb. 25 (1444-5),<sup>104</sup> "John, Archbishop of Canterbury, Primate of all England, Deputy of the See of Rome, and Chancellor of England, declared the cause of the calling of the Parliament; taking for his theme *Justitia et Pax osculatæ*. Psal. 84. Upon which he sheweth how that through the great travail of the earl of Suffolk (the King's dear cousin) and other noblemen, ambassadors sent into France, as well for a treaty of marriage to be had between the King and Margaret, the daughter of the King of Sicily, as for peace to be had between the realms of England and France, the same marriage was contracted, and an abstaining from war for a time was granted. He further showed how that the said Earl remained in France, attending for the safe conducting of the said Princess into the realm of England."<sup>105</sup>

Parliament was prorogued from March 15 to April 19.<sup>106</sup>

Marriage between Henry and Margaret was solemnized in Hampshire county, according to one account at Southwich,<sup>107</sup> according to another at Titchfield abbey, on April 22, 1445; she was crowned at Westminster May 30.<sup>108</sup>

On June 2d, 1445, Suffolk having made to the King, Lords and Commons a declaration of his services; it was enacted that he "should be holden a most true and faithful subject."<sup>109</sup>

Of ordinances and statutes made in this parliament (which began

<sup>104</sup> "In the presence of the King, sitting in person in the Chair of Estate, and of the Lords and Commons." Cotton's Abr., p. 629, No. 1.

<sup>105</sup> *Id.*, No. 1 to 3. William Burley, Esquire, is chosen as the Speaker of the Commons. *Id.*, Nos. 8, 9.

<sup>106</sup> *Id.*, No. 10.

<sup>107</sup> Dugdale's Engl. and Wales, p. 1402; 3 Turner's Engl., ch. 11, p. 41, of 2d ed. (1825.)

<sup>108</sup> Miss Strickland's Queens of Eng-

land, vol. 3, pp. 138, 139, of Phila. ed. 1857.

<sup>109</sup> Cotton's Abr., p. 630, Nos. 18, 19. On p. 629, in the margin of No. 11, is this: "The 15 June the Parl. for the plague and harvest was prorogued to 20 October." No. 11 is as follows: "The fifteenth day of December, in the twenty-fourth year, &c., the Chancellor prorogued the same Parliament from the same day unto the twenty-fourth of January ensuing, at Westminster."

Feb. 25, 1444-5—23 Hen. VI—and was continued to 9th April, 24 Hen. VI, 1446),<sup>110</sup> chapters 7, 9, 14 and 16 are in 1 Statutes Revised.<sup>111</sup>

17. *Will of Cardinal Beaufort, ex-chancellor of England, dated Jan. 21, 1446. Parliament opened by Chancellor Stafford in 25 Hen. VI (1446-7) Feb. 10. The Duchess of Gloucester deprived of dower. The Duke, after being arrested, is found dead, Feb. 23, 1447. Beaufort, the Cardinal and ex-chancellor dies April 11, 1447. Of the death-bed scene and his character.*

The will of Cardinal Beaufort, ex-chancellor of England, is dated Jan. 21, 1446, and begins thus:

"How transitory, mutable and perishing is this life! I look upon it to be rather as a shadow that soon vanishes, or a spectacle, than a solid duration of days."<sup>112</sup>

How far this was verified in his case will presently appear. At St. Edmonds Bury, on Feb. 10, in 25 Hen. VI (1446-7), parliament was opened with great form.<sup>113</sup> The little business done during the session<sup>14</sup> embraces this:

"It is by the King enacted that Ellinor, the late wife of the Duke of Gloucester, shall be utterly barred to claim any dower of any of the hereditaments of the said Duke."<sup>115</sup>

The Duke of Gloucester, after being arrested on a charge of treason, is found, Feb. 23, 1447, dead in his bed.<sup>116</sup>

<sup>110</sup> 2 Stat. of the Realm, p. 326 to 343.

<sup>111</sup> Edi. 1870, p. 334 to 347.

<sup>112</sup> 3 Turner's Engl., edi. 1825, ch. 12, p. 58. "Besides £4,000 to the prisoners in Newgate, Ludgate, Fleet, Marshalsea, King's Bench, and in the prison belonging to his Southward manor, he bequeathed his residue for works of charity and pious uses, especially in relieving poor religious houses, in marrying poor girls, and in succoring the poor." His codicils were dated 7 and 9 April, 1447. *Id.*, p. 58.

<sup>113</sup> "In the presence of the King, sitting in the Chair of Estate, within the house of refectory of the Abbey of Bury St. Edmonds, and of the Lords and

Commons" by "John, Archbishop of Canterbury, Primate of England, Legate of the See of Rome and Chancellor of England." Cotton's Abr., p. 634, No 1.

William Tresham, Esquire, was chosen Speaker of the Commons. *Id.*, p. 635, Nos. 9 and 10.

<sup>114</sup> 3 Stubbs's Const. Hist., ch. 18, p. 136.

<sup>115</sup> Cotton's Abr., p. 635, No. 17. This so-called *enactment* is not in the *statute* of 25 Hen. VI (1446-7), as printed in 2 Stat. of the Realm, p. 344. Nor is it entitled to be regarded as a *judgment* by 'due process of law.'

<sup>116</sup> 5 Collyer's Engl., edi. 1775, p. 114; 2 Hume's Engl., ch. 20, p. 411, of N.

In about six weeks<sup>117</sup> the Duke was followed to the grave by his uncle and former competitor, Cardinal Beaufort, ex-chancellor of England. In the play of *Hen. VI* (act iii, scene iii), he is painted on his death bed as in a state of great remorse. But notwithstanding Lord Campbell's language,<sup>118</sup> there seems ground for saying that Shakspeare's dramatic picture should not be accepted as historic truth.<sup>119</sup>

On April 11 "the Cardinal of England passed away; not as the great poet has described him, in the pangs of a melo-dramatic despair, but with the same business-like dignity in which for so long he had lived and ruled. As he lay dying in the Wolvesey palace at Winchester, he had the funeral service and the mass of requiem solemnized in his presence; in the evening of the same day he had his will read in the presence of his household, and the following morning confirmed it in an audible voice; after which he bade farewell to all, and so died."<sup>120</sup>

Y. edi. 1850; 5 Lingard's *Engl.*, ch. 2, p. 122, *note*; 3 Stubbs's *Const. Hist.*, ch. 18, p. 136. "This Prince's vault, in which his body was preserved in a kind of pickle, was discovered at St. Alban's in the year 1703." 1 Granger's *Biogr. Hist.*, p. 21. In Thomas Dugdale's *England and Wales*, it is said of St. Alban's abbey, "The tombs of the founder Offa, and that of Humphrey, Duke of Gloucester, are shown here; and not many years ago the leaden coffin, containing the body of the latter, was opened, and the corpse found nearly entire." Vol. 1, p. 18.

<sup>117</sup> Cardinal Beaufort died April 11, 1447. 3 Turner's *Engl.*, ch. 12, edi. 1825, p. 56.

<sup>118</sup> 1 *Lives of the Chancellors*, ch. 20, pp. 342, 343, of 2d edi. (1846), pp. 321, 322, of Boston edi. 1874. What is said in Hall's *Chron.*, p. 210, on the authority of John Baker, a counsellor of the Cardinal, is mentioned in 3 Turner's *Engl.*, ch. 12, p. 58 of edi. 1825, and remarked on in 3 Stubbs's *Const. Hist.*, ch. 18, p. 138, note 2.

<sup>119</sup> 5 Lingard's *Engl.*, ch. 2, p. 124,

and notes; Foss's *Biogr. Jurid.*

<sup>120</sup> 3 Stubbs's *Const. Hist.*, ch. 8, p. 138. "He had, indeed, been too rich for his own fame: Henry, when the Bishop's executors offered him a sum of £2,000 from the residue, put them aside, saying, 'My uncle was very dear to me, and did much kindness to me whilst he lived; the Lord reward him. do ye with his goods as ye are bounden; I will not take them.' Henry spoke the truth; Beaufort had been the mainstay of his house. For fifty years he had held the strings of English policy, and done his best to maintain the welfare and honour of the nation. That he was ambitious, secular, little troubled with scruples, apt to make religious persecution a substitute for religious life and conversation; that he was imperious, impatient of controul, ostentatious, and greedy of honour;—these are faults which weigh very lightly against a great politician, if they be all that can be said against him. It must be remembered, in favour of Beaufort, that he guided the helm of State during the period in which the English nation tried first the great

18. *Of the Masters of the Rolls from 1438: John Stopindon till 1447; and then Thomas Kirkeby till the end of the reign.*

*John Stopindon*<sup>121</sup> was appointed Master of the Rolls on Nov. 13, 1438.<sup>122</sup>

*Thomas Kirkeby*<sup>123</sup> probably came into possession of the Mastership of the Rolls before May 25, 1447;<sup>124</sup> but after his predecessor's death obtained a new patent dated Jan. 26, 1448, with a grant to him for life.<sup>125</sup>

19. *Chancellor Stafford opened Parliaments in 1448 and 1449. Intelligence, learning and caution exhibited by him during his long chancellorship. He retired from it in January, 1450, and was succeeded by John Kempe, archbishop of Canterbury.*

John Stafford, Archbishop of Canterbury, was Chancellor of England, when, on April 30, in 26 Hen. VI (1448) there was a writ allowing Thomas Asshecombe, "one of the eight eleemosynary clerks, to marry, and granting him certain other privileges."<sup>126</sup> He declared the cause of the Parliament in 27 Hen. VI, "on Wednesday, Feb. 12"<sup>127</sup> (1448-9). There being in the Upper House a contro-

experiment of self-government with any approach to success; that he was merciful in his political enmities, enlightened in his foreign policy; that he was devotedly faithful, and ready to sacrifice his wealth and labour for the King; that, from the moment of his death, everything began to go wrong, and went worse and worse until all was lost. If this result seems to involve a condemnation of his policy, it only serves to enhance the greatness of his powers and fidelity. But his policy, so far as it was a policy of peace and reconciliation, is not condemned by the result. It was not the peace but the reopening of the strife that led directly to ruin." *Id.*, p. 139.

<sup>121</sup> One of the Masters in Chancery in 10 Hen. VI, and Keeper of the Hanaper in 11 Hen. VI. In this year he was, on May 19 (1433), appointed archdeacon of

Colchester. Foss's Biogr. Jurid.

<sup>122</sup> In his patent on this occasion special reference is made to his services to the last two Kings in France and Normandy. He became archdeacon of Dorset on July 19, 1440; was employed in Dec., 1440, as one of the commissioners to conclude a treaty of alliance with the ambassadors of the archbishop of Cologne, and died about April, 1447. *Id.*

<sup>123</sup> One of the Masters in Chancery, from 18 Hen. VI (1439), when he received a grant of the office of Master of the Rolls in reversion after the death of John Stopindon. *Id.*

<sup>124</sup> When Stopindon's successor in the archdeaconry of Dorset was collated. *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Orders in Chancery by Sanders (Appendix), pp. 1029, 1030.

<sup>127</sup> "In the presence of the King, sitting in the Chair of Estate, in the



versy between the Earls of Arundel and of Devonshire as to seats, places and pre-eminence, opinions were given thereupon.<sup>128</sup> Of this parliament's ordinances and statutes<sup>129</sup> the fifth chapter is in 'Statutes Revised.'<sup>130</sup>

In 28 Hen. VI, after Parliament was summoned for Nov. 6, it was repeatedly prorogued.<sup>131</sup> March 30, 1450, is mentioned as the day on which it "adjourned to Leicester for April 29"; afterwards "it sat until May 17."<sup>132</sup> Its ordinances and statutes are in 'Statutes of the Realm.'<sup>133</sup>

"Throughout his lengthened possession of the Great Seal,<sup>134</sup> Archbishop *Stafford* was allowed to have exhibited that learning and caution and intelligence which were to be expected from his early character and his long experience."

"Whether induced by the consciousness of increasing infirmities, or dreading the storm then collecting against the Duke of Suffolk, or forced by the dissatisfaction of the people with the terms of the

Chamber *de Pinct*, in the palace of Westminster, and of the Lords and Commons." Cotton's Abr., p. 637, No. 1. On February 15 the Commons presented John Day, Esq., to be their speaker. *Id.*, p. 638, No. 7.

April 4, "the Chancellor, by the King's commandment and assent of the Lords, prorogued the Parliament" until Wednesday, May 7, at Westminster. *Id.*, No. 11.

May 30, "for that the plague reigned in London and Westminster, the Chancellor, as afore, prorogued the Parliament" unto June 16 at Winchester. *Id.*, No. 13.

<sup>128</sup> 13 Rep., 63.

<sup>129</sup> 2 Stat. of the Realm, p. 345 to 352.

<sup>130</sup> Edi. 1870, p. 347 to 349.

<sup>131</sup> "In presence of the King, sitting in the Chair of Estate, in the Chamber *de Pinct*, within the palace of Westminster and of the Lords and Commons, John, Archbishop of Canterbury, declared how that the King had really prorogued the same Parliament in London for avoiding the infectious air of Westminster, wherefore he willed the

Commons to choose, and the next day to present to the King their speaker." Cotton's Abr., p. 640, No. 1.

On Saturday, Nov. 8, "the Commons presented to the King Sir *John Popham*, Knight, to be their speaker." His excuse was received (*Id.*, No. 6); and "the same day the Commons presented to the King *William Tresham*, to be their speaker, who, with the common protestation, was allowed." *Id.*, No. 7. "Dec. 4, the Parliament was adjourned from London to Westminster," to be holden the next day." *Id.*, No. 8.

Dec. 17, "the Archbishop of Canterbury, Chancellor of England, in the presence of the King, gave thanks on his behalf to the three estates, and prorogued the Parliament from the said day unto the twenty second of January, next ensuing, at Westminster." *Id.*, No. 9.

<sup>132</sup> 3 Stubbs's Const. Hist., ch. 18, p. 143, note 4.

<sup>133</sup> Vol. 2, p. 353 to 357.

<sup>134</sup> He remained in the Chancellorship uninterruptedly for eighteen years, wanting thirty-two days. Foss's Biogr. Jurid.

peace with France, for which he, with the other ministers would be deemed responsible, he resigned the office of Chancellor."<sup>135</sup>

Though *John Kempe*, Archbishop of York, had resigned the Great Seal in 1432, yet he had continued industriously to attend the council. In 1439, he was one of the ambassadors to treat for peace with France; and was, in December made cardinal priest by the title of St. Balbina.<sup>136</sup> In January, 1450, after Suffolk's speech,<sup>137</sup> is the following:

Jan. 22, "the Chancellor was discharged, and John, the Cardinal, Archbishop of York, was appointed Chancellor by the King."<sup>138</sup>

It was a period of great trouble;<sup>139</sup> and it was too late to restore the King's fortunes.<sup>140</sup>

In that year Queen Margaret was trying to promote the fortunes of 'her trusty and well beloved Squier, Thomas Burneby': it was in 1450 that she wrote from Eltham 'to Dame Jane Carew,' a wealthy widow, recommending Burneby's suit.<sup>141</sup>

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> 3 Turner's Engl., ch. 13, edi. 1825, pp. 69, 70; Cotton's Abr., p. 641, Nos. 14, 15.

<sup>138</sup> *Id.*, No. 10. Stafford "lived a little more than two years after his retirement, and dying at his palace at Maidstone on July 6, 1452, was interred in Canterbury Cathedral." Foss's Biogr. Jurid.

<sup>139</sup> Jan. 26, "the Commons require that the Duke" (of Suffolk) "for his confession might be committed to ward; the Lords and Justices upon consultation thought there was no good cause unless some special matter were objected against him." *Id.*, No. 16.

Jan. 28, "the Speaker declared how the Duke of Suffolk (as it was said) had sold this Realm to the French who had prepared to come hither; and that the same Duke, for his own defence, had

furnished the castle of Wallingford with all warlike munition; upon whose request the said Duke was then committed to the Tower of London." *Id.*, No. 17.

The articles against the Duke of Suffolk, and the proceedings and judgment thereupon are, in *Id.*, p. 641 to 644, No. 18 to 53; and in 1 State Tr., p. 272 to 275. Mr. Stubbs's statement thereof is in 3 Const. Hist., ch. 18, p. 144 to 149. "On the 2d of May" Suffolk "was beheaded by the crew of a ship which had been waiting to intercept him." *Id.*; citing Paston Letters, edi. Gairdner i, 121, 122, 124, 126. The letter of May 5, 1450, from Wm. Lomner to John Paston (as to the beheading) is in Engl. Letters (Scoones's), edi. of 1880, pp. 1, 2.

<sup>140</sup> 3 Stubbs's Const. Hist., ch. 18, p. 144.

<sup>141</sup> Engl. Letters (Scoones's), edi. 1880, pp. 7, 8.

20. *How Henry (precocious rather than strong in mind, and over-worked from childhood), broke down. In 1450 his incapacity for government proved. Now Richard, Duke of York, becomes prominent.*

Henry "had been very early initiated in the forms of sovereignty. Before he was four years old he had been brought into the painted chamber to preside at the opening of parliament, and from that time had generally officiated in person on such occasions. Before he was eight, he was crowned King of England, and, as soon as he was ten, King of France. At the age of eleven he had had to make peace between his uncles of Bedford and Gloucester."—"Under the teaching of Warwick he had learned knightly accomplishments; Gloucester had pressed him with book-learning; Beaufort had instructed him in government and diplomacy. He was a somewhat precocious scholar, too early taught to recognize his work as successor of Henry V."—"At the age of fifteen he was hard at the work which had overtaken the greatest kings that had reigned before him and which is undone still. In the work of the universities, like Duke Humfrey himself he was as early interested; his foundations at Eaton and Cambridge were begun when he was eighteen and watched with the greatest care as long as he lived."<sup>142</sup>—"Weak in health—for had he been a boy of average strength he would have been allowed to appear in military affairs as early as his father and grandfather had appeared—and precocious rather than strong in mind, he was over-worked from his childhood, and the over-work telling upon a frame in which the germs of hereditary insanity already existed, broke down both mind and body."—His coming of age did not much affect his actual position. "He had long been recognized as the depositary of executive powers which were to be exercised by the council; he continued under the influence of the cardinal, from whom he had learned the policy of peace, though he had not learned the art of government."<sup>143</sup>

In 1450, after Suffolk's death, was the rebellion of John Cade and the Kentish men.<sup>144</sup> Mr. Stubbs says:

"This event which, more than anything else in Henry's reign

<sup>142</sup> 3 Stubbs's Const. Hist., ch. 18, p. 129. Among the proceedings of the Parliament of 23 Hen. VI are the following:

No. 21. "The King's Letters Patents of the erection and donation of the college of Eaton, founded *anno* 20 H. VI, with all the lands and liberties then and now granted, and especially declared and confirmed by the whole

estates." Cotton's Abr., p. 630.

22. "The like Letters Patents of the Kings, made for the erection and donation of the college in Cambridge, are confirmed." *Id.*

<sup>143</sup> 3 Stubbs's Const. Hist., pp. 130, 131.

<sup>144</sup> 5 Collyer's Engl., ed. 1775, p. 125, *et seq.*; 2 Hume's Engl., ch. 21, p. 424, *et seq.*, of N. Y. ed. 1850; 5 Lingard's Engl., ch. 2, p. 137, *et seq.*

proves his *utter incapacity for government*, serves also to shew how helpless the removal of Suffolk had left him. Of the two men who would most naturally have taken the lead in council, the Duke of Somerset was in France, the Duke of York was in Ireland. The Lord Say and Sele, who was one of the special objects of popular hatred, was the King's treasurer. *Cardinal Kemp, the Chancellor, was scarcely fitter than Henry himself to deal with an armed mob.*"<sup>145</sup>

"The King was obliged to send the treasurer to the Tower, either to appease the mutineers, or to save the minister. Deserted by his army, the unhappy King retired to Kenilworth; the mayor and citizens of London offered to stand by him, but Henry had no confidence either in them or himself. On his departure the rebels returned; Cade entered London on the 3d of July, and on the 4th the treasurer was seized and beheaded. On the 5th, in a battle on London bridge, the rebels were defeated, and the city freed from their presence. *The Chancellor then offered pardons already sealed to Cade and his followers.* The pardons were accepted; the rebels dispersed; Cade to plunder and ravage, the more honest followers to their own homes."—"Anarchy was spreading from the moment that Henry was seen to be incompetent."<sup>146</sup>—"The administration of justice was sound, but the power of enforcing justice was to some extent wanting."<sup>147</sup>

"It is now that Richard, Duke of York, first comes prominently on the stage. He was about forty years of age, and had been for fifteen years in public employment as regent of France or lieutenant of Ireland. In both capacities he had shewn great ability."<sup>148</sup>—"Now that Somerset and the policy which he supported had become odious, the nation looked kindly on the one sound administrator left."<sup>149</sup>—"But York's position was too full of danger to the crown to make it possible to lodge the administration in his hands; whilst in his own estimation it was such, as entitled him to nothing lower than the first place in court and council."—"It was a race who should come home first and take the kingdom in hand. York seems to have reached England before his rival, but Somerset had a strong ally in the Queen; and he was not far behind. The capture of Cherbourg, on the 12th of August, set him free from all duty in Normandy, on the 11th of September he was made High Constable of England. Before this the duke of York had visited the king."—"He urged the calling of a new parliament; and on the 5th of September a summons was issued."<sup>150</sup>

21. *Parliament of 29 Hen. VI (1450) opened by Chancellor Kemp; its proceedings.*

In 29 Hen. VI, "on the feast of St. Leonard" (Nov. 6, 1450),

<sup>145</sup> 3 Stubbs's Const. Hist., ch. 18,  
p. 150.

<sup>146</sup> *Id.*, p. 152.

<sup>147</sup> *Id.*, p. 155.

<sup>149</sup> *Id.*, p. 155.

<sup>148</sup> *Id.*, p. 153.

<sup>150</sup> *Id.*, p. 155 to 157.

"John, the Cardinal, Archbishop of York and Chancellor of England,"<sup>151</sup> declared the causes for which "Parliament was called." After the Commons had chosen their speaker,<sup>152</sup> but little was done before the prorogation of Parliament to Jan. 20.<sup>153</sup> Mr. Stubbs says:

"The election of speaker at once showed that York's attempt to influence the elections had been successful; the choice of the commons fell on Sir *William Oldhall*, his chamberlain and counsellor, one of the allies, who had been only prevented by arrest from meeting him when he landed. The proceedings of the session were begun by an altercation between the two dukes, the one supported by the commons, the other by the court and council. During the session parliament was supreme; Somerset was arrested on the 1st of December, his equipage being plundered by the mob. On the 18th the parliament was prorogued, and immediately after Christmas Somerset was made captain of Calais."<sup>154</sup>

"On the meeting of parliament, January 20, 1451, the struggle was renewed. Henry plucked up spirit to reject a petition, that Suffolk might be declared a traitor, but he was obliged to receive another, in which the commons demanded that he should remove from court the duke of Somerset, the duchess of Suffolk, the lord Dudley, the bishop of Lichfield, and the abbot of Gloucester,<sup>155</sup> with several knights and gentlemen. The king refused to dismiss the Lords, but consented to the removal of the rest for a year.<sup>156</sup> This was itself no small triumph; Dudley and the Abbot of Gloucester were excluded from the council; and Somerset's position became still more

<sup>151</sup> "In the presence of the King (sitting in the Chair of Estate in the Chamber *de Pinet*, within the palace of Westminster), Lords and Commons." Cotton's Abr., p. 646.

<sup>152</sup> "On Monday, Nov. 19, "the Commons presented to the King Sir *William Oldhall*, Knight, to be their speaker, who with the common protestation was allowed." *Id.*, p. 646, No. 6.

<sup>153</sup> *Id.*, p. 646. Nos. 8 and 9 are as to the murder of *William Tresham*, Esq. Dec. 17, "the Chancellor, in the presence of the King and of the three Estates," prorogued the Parliament unto Jan. 20. *Id.*, No. 10.

<sup>154</sup> 3 Stubbs's Const. Hist., ch. 18, p. 158.

<sup>155</sup> *Id.*, pp. 158, 159. In Cotton's Abr., p. 647, No. 16, begins thus: "The Commons pray the King that Edmond, Duke

of Somerset, Alice Poole, late the wife of William Poole, late Duke of Suffolk, William, Bishop of Chester, Sir John Sutton, Knight, Baron of Dudley." After twenty-six other names, of which one is Reynold, Abbot of St. Peters, in Gloucester county, and another is Lord Hastings, the prayer is that they "be abandoned from the King's presence during their lives, and not to come within twelve miles of the court, for that the people speak evil of them."

<sup>156</sup> 3 Stubbs, pp. 158, 159. In Cotton's Abr., p. 647, the response is: "The King, of his mere motion, is contented that all shall depart, unless they be Lords, and a few of them whom he may not spare from his person, and they shall so continue for one year, to see if any man can duly improve them."

critical. Thomas Yonge, the member for Bristol, ventured to propose that the duke of York should be declared heir to the crown. Little was done, however, in the parliament which sat until April 19, and met again on May 5.<sup>157</sup>

The statute of this parliament of 29 Hen. VI (1450) is in 2 Stat. of the Realm, p. 357 to 359.

22. *Result of the parliament of 29 Hen. VI. Transfer in 1452 of Kempe from the Archbishopric of York to that of Canterbury. Additional rank granted him by the pope. By whom in the absence of Chancellor Kempe, parliament was opened in 31 Hen. VI (1452-3). The chancellor died in March, 1453. His character. Proceedings and statute of this parliament; especially as to jurisdiction in chancery. Under ch. 4 'the chancery had admiral jurisdiction.'*

The result of the Parliament of 29 Hen. VI "was to shake but not to overthrow Somerset. He retained his influence with both king and queen; the unpopular abbot of Gloucester had already in December been made bishop of Hereford; Thomas Yonge was sent to the Tower."<sup>158</sup>

In 1452 "the policy and influence of Somerset were still supreme. *Archbishop Kemp was transferred in July from York to Canterbury.*"<sup>159</sup>

In March 31 Hen. VI (1452-3), "William, bishop of Lincoln, *in the absence of John, Archbishop of Canterbury, Chancellor of England*, by the King's commandment, declared the cause of the Parliament."<sup>160</sup>

<sup>157</sup> In Cotton's Abr., p. 446, No. 11, is: "The twenty ninth day of April the Parliament was likewise prorogued from the same day unto the fifth of May, then ensuing at Westminster."

<sup>158</sup> 3 Stubbs's Const. Hist., ch. 18, p. 159.

<sup>159</sup> *Id.*, p. 162. "On this translation the Pope granted him the rank of cardinal bishop by the title of St. Rufina; and he had the satisfaction of receiving the cross and the pall at the hands of his nephew, Thomas Kempe, then bishop of London," who "is said to have penned this hexameter:—*Bis primus,*

*ter præses, et bis cardine functus.*" Foss's Biogr. Jurid.

<sup>160</sup> "In the presence of the King, sitting in the Chair of Estate in the Chamber of Refectory, within the abbey of Reding and of the Lords and Commons." Cotton's Abr., p. 649. It is more probable that the day was the 6th of March, as stated in 13 Rep. 63, and 3 Stubbs, p. 163, than the *seventeenth*, as printed in Cotton's Abr. For, in the latter, the *eighth* is mentioned as the day on which the Commons presented their speaker.

"The place" (Reading) "was probably selected as one free from the York influence, which was strong in London; and the election of the Speaker shewed that the Duke" (of York) "was not likely to have his own way in the assembly. The choice fell on *Thomas Thorpe*, a knight of the shire for Essex," who had been remembrancer "of the Exchequer," and "who was strongly opposed to him."<sup>161</sup>

The days printed in Cotton's Abr. as those from and to which prorogations were made<sup>162</sup> do not always agree with what is stated by Mr. Stubbs.<sup>163</sup>

"During the autumn" (of 1453) "the King was attacked by illness which very soon produced a total derangement of his mental powers and made him for the time an idiot."<sup>164</sup>

"The King's illness increased and it was the urgent business of the council to provide for the interrupted action of the executive. On the 21st of November a great council was held for the purpose of securing peace in the land, and to this the duke of York, who seems at first not to have been properly summoned, was called up by special letters. In this invitation Somerset did not join, and the invitation itself probably implies that the council was now inclined to accept the services of his rival."—"The arrest and imprisonment of" Somerset "followed in December."<sup>165</sup>

<sup>161</sup> 3 Stubbs, p. 163, and note 3.

<sup>162</sup> "The eighteenth day of March, after thanks given to the Lords by the King himself, John, the Cardinal, Archbishop of Canterbury and Chancellor of England, by the King's commandment prorogued the Parliament from the day aforesaid and town of Reding to the twentieth day of April, then ensuing, at Westminster." Cotton's Abr., p. 650, No. 12. "After the words spoken to the Commons by the King (viz: *we thank you for your grants, for the which be ye assured we will be a good and gracious Lord unto you*), John, the Cardinal, Archbishop of Canterbury and Chancellor of England, the second day of July, by the King's commandment, prorogued the Parliament from the day aforesaid unto the seventh day of November at Reding." *Id.*, No. 20.

"At Reding, the twenty-second of November, in the 32 H. VI, to which

place and day the Parliament was prorogued, John, the Cardinal, Archbishop of Canterbury and Chancellor of England, by his Letters Patents, rehearseth the beginning and prorogation of the Parliament, and adjourneth the same from the day aforesaid to the eleventh day of February then ensuing, at Westminster." *Id.*, No. 22.

"The eleventh day of February, at Reding aforesaid, John, earl of Worcester and Treasurer of England, by the King's Letters Patents, prorogued the Parliament from the day and place aforesaid to the fourteenth day of the same month at Westminster." *Id.*, pp. 650, 651, No. 23.

<sup>163</sup> In 3 Const. Hist., ch. 18, pp. 163, 164.

<sup>164</sup> *Id.*, p. 164. Octo. 13, 1453, was the day of the birth of Edward, Prince of Wales, *Id.*; 2 Mackintosh's Engl., Phila. edi. 1831, p. 21.

<sup>165</sup> 3 Stubbs, pp. 164, 165.

Feb. 14 (1453-4), "Richard, duke of York, by the King's Letters Patents of precedence, presideth in the same Parliament,"<sup>166</sup>

"He was already in possession of supreme power, though not yet nominally regent; the influence of Somerset in the council was paralyzed by his arrest."—"The house of Commons in vain demanded the release of their Speaker."—They "had to make the best of it."<sup>167</sup>

Feb. 10, "Certain of the Commons were sent to the Lords to make declaration how they had newly chosen (in the place of Thomas Thorp) Thomas Charlton, Knight, to be their Speaker; the Chancellor answered, the King liked him and willed them to proceed with effect."<sup>168</sup>

On Tuesday, March 19, there was a message from the Commons to the Lords, part of which was "that a grave council may be ready to answer all";<sup>169</sup> or in another's language, "that the promise which the Chancellor had made at Reading, to appoint a sad and wise council, might be fulfilled." If the chancellor replied "promising a good and comfortable answer," "that answer he did not live to furnish."

"He died three days after,"<sup>170</sup> on the 22d of March. He was about seventy-four, a man of great experience, moderation and fidelity; the friend and coadjutor of Beaufort, and yet thoroughly respected by the opposite party. He knew, however, that he himself must be the next victim; the duke of Norfolk, the pliant agent of the duke of York, had already begun to threaten him, and his death may have been hastened by the alarm and excitement."<sup>171</sup>

<sup>166</sup> Cotton's Abr., p. 651, No. 24.

<sup>167</sup> 3 Stubbs, pp. 165, 166; 13 Rep. 64; 1 Mackintosh's Engl., Phila. edi. 1831, p. 24. "The Duke of York came before the House of Lords and showed how the Duke of York in the vacation had recovered damages in an action of trespass against the said Thorp by verdict in the King's Exchequer, for carrying away the goods of the said Duke of York out of Durham House, for the which he remained in execution, and prayeth that he may continue the same." Cotton's Abr., p. 651, No. 26.

<sup>168</sup> *Id.*, No. 29.

<sup>169</sup> 1 Cotton's Abr., p. 651, No. 30.

<sup>170</sup> 3 Stubbs, 166. "On the 22d of March," *Id.*; or, on the 23d. 3 Turner's Engl., ch. 18, edi. 1825, p. 193.

<sup>171</sup> 3 Stubbs, 166. "His name is still remembered in the University of Oxford, to the schools of which, as well as to his own college, he was a munificent benefactor. He beautified the collegiate church of Southwell, and rebuilt that of his native parish Wye, where he erected a tomb to his parents, and, in 1447, endowed a college of secular priests for the celebration of divine service and the instruction of youth, calling them the provost and fellows of St. Gregory and St. Martin. This establishment was dissolved with the other religious houses under Henry VIII; but the buildings have been since devoted to the purposes of parish education with part of the original endowments." Foss's Biogr. Jurid.



The statutes of this Parliament at Reading are in nine chapters; whereof several<sup>173</sup> mention the Chancery. Ch. 2 has the proviso "that no matter determinable by the law of this realm shall be by the said act determined in other form than after the course of the same law in the king's courts having determination of the same law."<sup>173</sup> Ch. 4 has in the margin (of 2 Stat. of the Realm, pp. 363, 364) this statement: "The chancellor, &c., may give redress for injuries done at sea or in any port to aliens in amity or with safety conduct." That "this court hath an admiral jurisdiction" was declared by the Lord Chancellor Nottingham.<sup>174</sup> He said in 1682, "Though the bar were not so well apprized of it, yet the Chancery had admiral jurisdiction by the statute of 31 H. VI."<sup>175</sup>

The statements in the margin of ch. 9 of stat. 31 Hen. VI import as to "abuses in compelling women to be bound by obligations or to marry against their liking," that "the party so compelled to become bound may sue a writ out of chancery to summon the persons complained of"; and that "the chancellor, &c., may examine into the complaint and do justice."

23. *By reason of the King's condition in March 32 Hen. VI (1453-4), the Duke of York appointed Protector. Richard Nevill, earl of Salisbury, made Chancellor. Curious commencement of his judicial career.*

In parliament, quickly after Chancellor *Kempe's* death, there were such proceedings as are mentioned below.<sup>176</sup>

<sup>172</sup> 2 Stat. of the Realm, p. 361 to 363, ch. 2; pp. 363, 364, ch. 4; p. 367 to 369, ch. 9.

<sup>173</sup> 4 Inst., 84; 2 Reeves's Hist. of Engl. Law, ch. 20, edi. 1869, p. 535.

<sup>174</sup> In 31 Car. 2 (1679), *Denew, &c. v. Stock*, Rep. Temp. Finch, 438.

<sup>175</sup> *The King v. Carew*, 1 Vern., 54; S. C. (*Rex v. Carew*), 3 Swanst. Ch. R., 670, cited in 1 Spence's Eq., 703. See also ch. 21, § 8, pp. 732, 733.

<sup>176</sup> "Certain Lords by name were appointed to go to the King lying sick at Windsor, and to know his pleasure

touching two articles. The first, to know who should be Archbishop of Canterbury, and who Chancellor of England in place of *John Kemp*, by whose death the King was to dispose of them? The second, to know whether certain being named to be of the council liked him or no? The said Lords, messengers, the twenty-fifth of March, report to all the Lords how they had been with the King at Windsor, and after three several repairs and earnest persuasions with the King, they could by no means have answer or token of answer; only they said the King was sick." Cotton's Abr., p. 651, Nos. 31, 32, 33.

"A message sent by the Lords to enquire the royal pleasure as to the appointment of a new archbishop and a new chancellor, revealed unmistakably the present condition of the King. It was impossible to attract his attention or to get a word from him. On the 23d a committee of the Lords visited him at Windsor; on the 25th they reported the failure of their mission. Nothing now could be done without the appointment of a regent. On the 27th the Lords chose the Duke of York to be protector and defender of the realm."<sup>177</sup>

After articles, which the Duke required to be enacted, and answers thereto,<sup>178</sup>

"The King by his Letters Patents appointeth the said Duke to be his Chief Counsellor, Protector and Defender of this realm at the King's will, and as unto such time as Edward the Prince shall come to the age of discretion; the which the Duke in full Parliament took on him to perform."<sup>179</sup>

One of the Duke's first acts was to invest *Richard Nevill*,<sup>180</sup> earl of Salisbury, with the office of Chancellor. In that character he is named in an ordinance dated March 30, 1454 (Rot. Parl. v, 450). But the Great Seal was not delivered to him till April 2. This officer—the only lay chancellor in the reign of Hen. VI—had not such attainments or experience as should generally be looked for to fill the chancellorship; but he had some distinction in the wars. His commencement of a judicial career was curious: on the next day after receiving the Great Seal, he was the first named of five lords appointed to 'entende with all diligence to them possible, to

<sup>177</sup> 3 Stubbs's Const. Hist., ch. 18, p. 166.

<sup>178</sup> Cotton's Abr., p. 652, No. 34 to 37.

<sup>179</sup> *Id.*, No. 38. "The like Letters Patents are made to Edward, the Prince, as *anno* 1 H. VI, tit. 25, with the yearly fee of 2,000 marks only, besides allowance for riding and such other exploits; provided the same be not prejudicial to any grant made to Margaret, Queen of England." *Id.*, No. 39.

<sup>180</sup> Ralph Nevill, the first earl of Westmoreland, had two wives and twenty-two children. By his first wife he had

two sons; the elder succeeding to his honours. By his second wife, who was Joane, daughter of John of Gaunt (duke of Lancaster), and Catharine Swinford, he had eight sons, the eldest of whom was this Richard Nevill, born about 1400. He married Alice, the only daughter of Thomas de Montacuto, earl of Salisbury, and upon her father's death, in 1428, had a grant of the title for his life. Engaged from his earliest youth in the profession of arms, he had service with considerable personal distinction in the French wars. Foss's Biogr. Jurid.

the saufgarde and keepyng of the sea,' for the resistance of the king's enemies.<sup>181</sup>

On March 15 "the infant prince was created prince of Wales."<sup>182</sup>—"Provisions made by the King for his Queen<sup>183</sup> and for his two half-brothers<sup>184</sup> were confirmed."—"The duke of York was made captain of Calais."<sup>185</sup>

24. *The King sane at Christmas, 1454. In March, 1455, the earl of Salisbury removed from, and Thomas Bourchier archbishop of Canterbury appointed to, the chancery. Effect of battle at St. Albans in May.*

"The King was sane at Christmas" (1454); "and recognized his little son for the first time on the 30th of December."<sup>186</sup>—"On the 5th of February Somerset was released."<sup>187</sup> On the 7th of March, 1455, the earl of Salisbury was removed from, and *Thomas Bourchier*,<sup>188</sup>

<sup>181</sup> Foss's Biogr. Jurid. "Richard, earl of Salisbury, John, earl of Shrewsbury, John, earl of Worcester, James, earl of Wiltshire, and the Lord Sturton, are appointed to keep the Seas; to whom is appointed for three years tonnage and poundage granted in the last parliament." Cotton's Abr., p. 652, No. 40. In the parliament of July, 33 Hen. VI (1455), is this: "At the request of the Earls of Salisbury, Shrewsbury and Worcester, and of the Lord Sturton, they were discharged from keeping of the Seas." *Id.*, p. 657, No. 27.

<sup>182</sup> *Id.*, p. 653, No. 47.

<sup>183</sup> *Id.*, p. 654, Nos. 58 and 59.

<sup>184</sup> *Id.*, p. 653, No. 49 to 52.

<sup>185</sup> *Id.*, p. 653, No. 53; 3 Stubbs's Const. Hist., ch. 18, p. 168, note 6. No attempt was made in parliament to bring Somerset to trial; he remained in prison, as did the Lord Cobham, who was in disgrace as a partizan of York's. *Id.*

<sup>186</sup> Mentioned in letter of Jan. 9, 1455,

from Edmund Clere to John Paston. Engl. Letters (Scoones's), edi. 1880, p. 5; 3 Stubbs's Const. Hist., ch. 18, p. 170.

<sup>187</sup> On giving sureties that he would be present for trial on the 3d of November. On the 6th of March he was restored to the captaincy of Calais. *Id.*, p. 170.

<sup>188</sup> Great grandson of Sir Robert de Bourchier (mentioned in ch. 19, § 23, p. 570), through his younger son, William, whose son, also named William, was created earl of Ewe, in Normandy, by Henry V, and married Anne, daughter of Thomas of Woodstock (duke of Gloucester, sixth son of Edward III), and widow of Edmund, earl of Stafford. Their eldest son, Henry, was created earl of Essex in 1461; and their second was the Thomas named in the text.

Soon after his father's death, in 1420, he became a student in Nevill's Inn at Oxford. In 1433 he was admitted to the deanery of St. Martin's, London;

archbishop of Canterbury, was appointed to, the office of Chancellor; and on the 15th James Butler, earl of Wiltshire, was made treasurer.

"A great council was then called to meet at Leicester to provide for the safety of the King; and the partisans of York were no longer summoned to attend the ordinary councils. The Duke could scarcely allege that such measures were unconstitutional or unprecedented, for they were in close analogy with his own policy of the previous year. He saw that they must be met by a resistance backed with armed force. With the Nevilles he collected his forces in the north and marched towards London."<sup>189</sup>

At St. Albans,<sup>190</sup> where the two parties met on the 22d of May, negotiation was tried in vain.

"A battle followed in which the duke of Somerset, the earl of Northumberland, the earl of Stafford, son of Buckingham, and the lord Clifford, on the King's side, were slain, and he himself was wounded. Although in itself little more than a skirmish which lasted half an hour, and cost comparatively little bloodshed, the first battle of St. Alban's sealed the *fate* of the kingdom; the duke of York was completely victorious; the King remained a prisoner in his hands."<sup>191</sup>

On the 26th of May, the King summoned parliament to meet in July.<sup>192</sup>

and in November is recommended for election to the See of Worcester; the king succeeded in placing him there March 9, 1435. In the university at Oxford he held the office of chancellor from 1434 to 1437. In 1443 he was translated (Dec. 20) to Ely. Eight days after the death of archbishop *Kempe*, on March 22, 1454, the council at the request of the Commons 'for his grete merits, virtues and grete blood that his of,' joined in recommending Bishop Bouchier to the pope as successor to the primacy. (Rot. Parl. v, 450.) It was on April 22, 1454, that he was elected,

and thus attained the highest ecclesiastical dignity in the kingdom; within a year he was entrusted also with the highest secular employment. Foss's Biogr. Jurid.

<sup>189</sup> 3 Stubbs's Const. Hist., ch. 18, p. 170.

<sup>190</sup> Distant from London 21 miles.

<sup>191</sup> 3 Stubbs, p. 171.

<sup>192</sup> On the 29th he removed the treasurer, replacing him with the viscount Bouchier, the archbishop's brother; the government of Calais was given to Warwick and the duke of York himself, became high constable. *Id.*, p. 172.

25. *In 33 Hen. VI (1455), Parliament opened by Thomas Bourchier, Archbishop of Canterbury and Chancellor. The King's enemies admitted to reconciliation. Parliament prorogued from July 31 to Nov. 12. Before that day the King was again insane. The Duke of York again became Protector. Parliament prorogued to Jan. 14, 1456. Its statutes; one prescribing what the Chancellor may do on complaint by executors of embezzlement of decedent's goods. The King recovered in February, 1456; and relieved the Duke as Protector.*

On Wednesday, the ninth of July, in 33 Hen. VI (1455), "Thomas, Archbishop of Canterbury and Chancellor of England, declared the cause of the Parliament."<sup>193</sup>

"A large conveyance made by the King; the King acquitteth Richard, duke of York, Richard, earl of Warwick and Richard, earl of Sarum, and them taketh to be his loyal subjects; albeit Edmund, late duke of Somerset, Thomas Thorp and William Joseph, by their untrue means, had caused the King to think the contrary, and thereby to have raised a great power against the said Duke and others."<sup>194</sup>

Next come the numbers mentioned in the note,<sup>195</sup> after which are the following:

23. "The humble obeysance of the Duke of York and his allies, in coming into the King's presence after the said conflict."

24. "The acquittal of the said Duke of York and of all others

<sup>193</sup> At Westminster, "in the presence of the King, sitting in the Chair of Estate, and of the Lords and Commons." On the next day he "caused articles openly to be read" in relation thereto. "On Friday, the third day of the Parliament, the Commons presented to the King Sir John Wenlock, Knight, to be their speaker." Cotton's Abr., pp. 656, 657, No. 1 to 17.

<sup>194</sup> *Id.*, p. 656, No. 18.

<sup>195</sup> 19. "The Duke of York's letters sent to the Archbishop of Canterbury, Chancellor of England from Royston in May before, "touching his coming by force towards the King, and his griefs conceived."

20. "The Letters of the said Duke and Earls, written to the King from Royston in May before, containing their enterprize and due obeysance to the King."

21. "The Letters were kept from the King's knowledge by the Duke of Somerset and others, until such time as the said Duke of York and others met with the King at St. Albone's."

22. "The Duke of York and his allies, the twenty-second day of May last, came to St. Albone's to have spoken with the King, whom the Duke of Somerset and others did resist with a great number of armed men, in which conflict the same Duke of Somerset was slain."

coming with him to the said conflict or battle, to any harms there done."

25. "All which are confirmed by whole assent of Parliament, the twenty-third day of July, in the thirty-third year, all the Bishops and Lords, in open Parliament, were sworn to be true to the King."<sup>196</sup>

July 31. "The Archbishop of Canterbury, Chancellor of England, in the King's presence, prorogued the Parliament" to Nov. 12.<sup>197</sup>

Before that day, *the King was again insane.*

The formalities observed in 1454 were again adopted; on the 13th the commons asked for the nomination of a protector; on the 15th they repeated the request, and the chancellor undertook to consult the lords; the lords agreed and nominated the Duke of York; on the 17th, in answer to the Speaker's enquiry as to the result of the proposal, it was announced 'that the royal assent was given to the nomination made by the lords. The Duke, under protest, accepted the office; and the King by letters patent, on the 19th, made the formal appointment to continue until the Duke should be relieved of his charge by the sovereign himself in parliament, or the prince should come of age. On the 22d the King vested the 'politique rule and governance' in the hands of the council of which the Duke was chief. On the 13th of December the parliament was again prorogued to January 14, 1456.<sup>198</sup>

Mr. Stubbs adds:

"On which day it met. On the 25th of February the King had recovered, and at once relieved the Duke from his office as protector."<sup>199</sup>

The ordinances and statutes of this Parliament are in seven chapters;<sup>200</sup> whereof the first is as to embezzlement of a decedent's goods by his servants; and provides what the Chancellor may do on complaint of executors.

26. *Though Thomas Bouchier, Archbishop of Canterbury, was willing to act as Chancellor, either for the Lancastrians or the Yorkists, yet the Great Seal was delivered Octo. 11, 1456, to William Waynflete, bishop of Winchester.*

Archbishop *Bouchier*, whom the Lancastrians had appointed Chan-

<sup>196</sup> "But none here are named." Cotton's Abr., p. 657, No. 25. "The like order is taken for all other Lords as should after come to take the like oaths." *Id.*, No. 26.

<sup>197</sup> Cotton's Abr., p. 657, No. 28.

<sup>198</sup> 3 Stubbs's Const. Hist., ch. 18,

pp. 173, 174; citing Rot. Parl. v, 284—290, 321, 322, 453, and Rymer xi, 369, 370, 373. The proceedings are in Cotton's Abr., pp. 658, 659, No. 30 to 50.

<sup>199</sup> 3 Stubbs's Const. Hist., ch. 18, p. 174; Cotton's Abr., p. 659, No. 50.

<sup>200</sup> 2 Stat. of the Realm, p. 369 to 378.

cellor little more than two months before the first battle of St. Alban's gave the Yorkists the ascendancy, did not then retire, but opened the parliament that met in July. When their power was more firmly established by a renewal of the king's illness and the re-appointment of the Duke of York as protector in November following, the archbishop still continued in the chancellorship. Now again, when the king resuming his authority, dismissed the protector on February 25, 1456, the chancellor was as ready to act under the king as he had been under the protector (Rot. Parl. v, 278, 285, 321). It is thought the Queen was dissatisfied with so lukewarm a friend; and desired in place of a time-serving character, a steady adherent to her husband's cause.

For the onerous part of chancellor was selected in Bouchier's place, *William Waynflete*.<sup>201</sup> The King regarded him with such especial favour that on the very day of his uncle Cardinal Beaufort's death (April 11, 1447), he wrote to Winchester in favour of proceeding to a new election of bishop, with an urgent recommendation of his 'right trusty and well beloved *clerc* and *concelloure*, Maister William Waynflete,' for the see; on the same day he granted him the custody of its temporalities; and on August 30, 1448, he was present at the "new prelate's enthronisation." While the bishop's devotion to the King was always firmly exhibited when his counsels were called for, his mildness and prudent conduct secured him from that inveterate enmity which followed others who took so decided a part.

<sup>201</sup> He was born in, and took his name from, a market town in Lincolnshire. His father was Richard Patten of that place, and his mother was Margery, daughter of Sir William Brereton (possessing considerable property in Cheshire), who held the post of governor of Caen in Normandy, and distinguished himself in the wars with France. Richard Patten was sometimes called Barbour, and his son, William, who went to Wykeham's school at Winchester, and thence proceeded to Oxford, did for a time use that name. In April, 1420, William Barbor is recorded in the Lincoln registry; in January, 1420-1,

'*William Barbor* became a sub-deacon by the style of *William Waynflete* of Spalding. By the latter name he was in the following March ordained deacon, and in January, 1426, presbyter on the title of the house of Spalding. When Robert Fitz-Hugh, archdeacon of Northampton (afterwards bishop of London), was appointed on a mission to Rome, *William Waynflete* 'in *legibus baccalarius*,' was one of those designed to accompany him; his letter of protection (to last for one year) was dated July 15, 1429. (Acts Privy Council iii, 347.) In the same year his talents and acquirements and the excellence of his charac-

On the 11th of October, 1456, the Great Seal was placed in the hands of William Waynflete, bishop of Winchester.<sup>202</sup>

27. *In 38 Hen. VI (1459), parliament opened by Chancellor Waynflete; its business was the attainder of the Duke of York and his friends. Under what circumstances Bishop Waynflete surrendered the Great Seal in July, 1460. Henry taken in his tent at Northampton on the 10th, and brought to London. George Nevill, bishop of Exeter received the Great Seal July 25.*

In 38 Hen. VI, on Tuesday, Nov. 20 (1459), "William, bishop of Winchester and Chancellor of England," made a declaration.<sup>203</sup> The business of this session at Coventree was the attainder of the Duke of York and his friends.<sup>204</sup>

In 39 Hen. VI (1460), it was ordained "that the said parliament holden at the said city of Coventry be void, and holden for no parliament."<sup>205</sup>

Pope Pius, the Second, had, in 1459, dispatched a legate to England, partly in hope to reconcile the rival Houses. The legate, Francesco de Coppini, bishop of Teramo, joined the party of the House of York, and fostered the dissensions he was sent to heal. Sir Henry Ellis has published a letter of June 25, 1460, to the Legate

ter gained him the appointment of Master of Wykeham's school at Winchester, the scene of his early education. Cardinal Beaufort conferred upon him the mastership and chantry of the hospital of St. Mary Magdalen, about a mile from Winchester. He was in possession in 1438, and continued to enjoy it till he himself was raised to the See. Henry VI, after a visit to Winchester, for the purpose of inspecting the system of Winchester school, gave the mastership of his new school at Eton to Waynflete, who accordingly removed there, in 1442, with five of the fellows and thirty-five of the scholars of Winchester, to commence the seminary. On December 21, 1443, he was promoted to be provost of Eton. Foss's Biogr. Jurid.

<sup>202</sup> Foss's Biogr. Jurid.

<sup>203</sup> "In the presence of the King, sitting in the Chair of Estate within the Chapter-house of the Privy of our Lady of Coventree and the Lords and Commons. Cotton's Abr., p. 661, No. 1. On the third day the Commons presented to the King Thomas Tresham, Esquire, to be their Speaker." *Id.*, No. 6.

<sup>204</sup> Cotton's Abr., p. 661 to 664; 3 Stubbs's Const. Hist., ch. 18, p. 179 to 181. In December, on the 20th (3 Stubbs, p. 185,) or 25th, "in the presence of the King and of the three estates, the Chancellor, by the King's commandment, after thanks given to all the estates, dissolved the Parliament." Cotton's Abr., p. 664, after No. 38.

<sup>205</sup> 2 Stat. of the Realm, pp. 378, 379.



from Richard, earl of Warwick, captain of Calais, Edward, earl of March, Richard, earl of Salisbury, and William Nevil, lord Fauconbridge.<sup>206</sup> Dr. Lingard, speaking of Warwick's landing in Kent in June, says:

"He brought with him Coppini, bishop of Terni, who had been sent by Pius II as legate to Henry, but had already sold himself to the King's enemies."<sup>207</sup>

Coppini's letter to the King, offering his mediation, is dated at London July 3, 1460.<sup>208</sup> Henry was now entrenched at Northampton. With him *there* was Bishop *Waynflete*, who had held the Great Seal for nearly four years.

"Disheartened at last by the reverses of the field, in perpetual anxiety by the doubtful event of each successive conflict, probably feeling that his services were misapplied in so bloody a controversy, and perhaps dissenting from the violent measures of his party, he resolved to retire. Accordingly on July 7, 1460, three days before the battle of Northampton, so fatal to the Lancastrians, he surrendered the Seal of the kingdom in the King's tent on the field."<sup>209</sup>

Warwick having given notice to prepare for battle, the legate, Coppini, "to animate his friends, not only excommunicated their enemies, but set up the papal banner in the field."<sup>210</sup> The battle was on the 10th of July, and it lasted only half an hour. Henry was taken in his tent, and on the 16th was brought to London.<sup>211</sup>

*George Nevill*<sup>212</sup> presided over the diocese of Exeter about nine

<sup>206</sup> Orig. Let., 3d series, vol. 1, p. 82 to 88.

<sup>207</sup> 5 Lingard's Engl., Boston ed. 1854, p. 158.

<sup>208</sup> Orig. Let. (Sir H. Ellis), 3d series, vol. 1, p. 88 to 97.

<sup>209</sup> "The same day a full pardon was granted to him for all offences which he might have previously committed." Foss's Biogr. Jurid.

<sup>210</sup> "The Pope became incensed at Coppini's perversion of his mission as well as at the enormous bribes in plate and money which he had received. He recalled him without delay: imprisoned

him in the castle of St. Angelo: subsequent to which Coppini made a full confession of his guilt. He was finally deprived of his bishopric, and changing the name of Francesco to Ignatius, became a monk in the Benedictine monastery of St. Paul at Rome, and died" "in obscurity." Sir H. Ellis's 3d series of Orig. Let., ed. 1846, p. 83; 5 Lingard's Engl., ch. 2, Boston ed. 1854, p. 159.

<sup>211</sup> 3 Stubbs's Const. Hist., ch. 18, pp. 183, 184.

<sup>212</sup> Was youngest son of Richard, earl of Salisbury (mentioned in § 23, p. 806), and being designed for the church, was

years, during which there is nothing to show that he took any active part in the unhappy contests with the crown until the fatal battle of Northampton had placed the King in the hands of his enemies, who, taking care to have their friends about him, obliged him to nominate Bishop Nevill as his chancellor. Accordingly on July 25, 1460, fifteen days after the battle, he received the Seal and took it home.<sup>213</sup>

28. *In 39 Hen. VI (1460), in October, Parliament opened by Chancellor Nevill. The crown of England claimed by Richard, duke of York; and objections stated against his claim. Accord assented to by King Henry and by the Duke of York and his sons. Henry continued to appreciate his ex-chancellor Waynflete, bishop of Winchester; a different sort of person from Francesco Coppini.*

In 39 Hen. VI, on "the seventh day of October" (1460), "George, bishop of Exeter, and Chancellor of England, made a notable declaration."<sup>214</sup>

10. "The sixteenth day of October the counsel of the Duke exhibited to the Lords in full Parliament a writing touching the right and claim of Richard, duke of York, to the Crown of England and Lordship of Ireland; the which Lords, upon consultation, willed it to be read amongst them, but not be answered without the King."

11. "The title deriveth the pedigree from H. 3 to Edw. 3; and proveth himself of the right line from Lyonell, duke of Clarence, the third son of E. 3; and next sheweth himself to be *indubitate* heir of the said Crown before any of the line of John of Gaunt, the fourth son of E. 3."

educated at Balliol College, Oxford, of which university he was afterwards chancellor. One of the first acts of the council, after his father's acceptance of the Seals, was to recommend him to the first vacant bishopric, although he was not yet twenty-two years of age. The bishopric of Exeter became void before the close of the following year, and though the Earl had been removed from the chancellorship, he and his son Richard, earl of Warwick, had such ascendancy, that George Nevill was elected (Rymer xi, 376); but the pope would not permit him to be consecrated till he had attained the age of twenty-

seven. Foss's Biogr. Jurid.

<sup>213</sup> "To his house in St. Clement Danes, being that which was afterwards called Essex-House, on the site of which Essex street and Devereux court now stand." *Id.*

<sup>214</sup> "In the presence of the King, sitting in the Chair of Estate in the Chamber *de Pinet* within the palace of Westminster and of the Lords and Commons." Cotton's Abr., p. 665, No. 1. "The fourth day of the Parliament the Commons presented unto the King *John Green*, Esquire, to be their Speaker." *Id.*, No. 9.

12. "The Lords, upon large consultation, declared this title to the King, who willed them to call the Justices, Serjeants and Attorneys to answer the same. They, so being called, utterly refused to answer the same; and order taken that every Lord might therein frankly utter his conceit, without any impeachment, unto them."<sup>215</sup>

The objections stated against the Duke's title are in No. 13; the answer of *Richard Plantagenet*, commonly called the Duke of York, to those objections is in Nos. 14, 15, 16, 17.<sup>216</sup>

"After this the Lords devised this order, that the King should enjoy the crown of England during his life, and the Duke and his heirs to succeed after him; and appointed that the Chancellor should declare this to the King."

"Whereupon the Duke of York's pedigree and title was again repeated; and the King assented that an accord between them should be made; the which was devised in form following":

"First. That the King should, during his life, enjoy the crown and the preheminance of the Realm of England."

"That the said Duke, the Earl of March and Edward, earl of Rutland, his sons, should be sworn by no mean to shorten the days, or impair the preheminance of the said King during his life."

"That the said Duke shall be from thenceforth reputed and instiled to be, the very heir apparent to the crown aforesaid, and shall enjoy the same after the death or resignation of the said King."<sup>217</sup>

Then there are the articles mentioned in the subjoined note.<sup>218</sup>

"After all this, in the vigil of Allhallowes,<sup>219</sup> the said Duke and the two Earls his sons, came into the Parliament Chamber before the King and Lords and there promised, and swore, to perform the accord aforesaid, with protestation if the King, for his part duly observed the same; the which the King then promised to do: the

<sup>215</sup> *Id.*, pp. 665, 666. <sup>216</sup> *Id.*, p. 666.

<sup>217</sup> *Id.*, No. 18 to 22.

<sup>218</sup> No. 23. "That the same Duke shall have hereditaments allotted to the clear yearly value of 10,000 marks, viz: 5,000 marks for himself, 3,500 marks for the Earl of March, and 1,500 marks for the Earl of Rutland."

24. "That the compassing of the death of the said Duke shall be treason."

25. "That all the Bishops and Lords in full Parliament shall swear to the said Duke and to his heirs in form aforesaid."

26. "That the said Duke and his two sons shall swear to defend the Lords for this agreement."

27. "The King, by assent of the Lords, agreeth to all the ordinances aforesaid of his free motion."

28. "The King, by the assent aforesaid, utterly repealeth the said statute of entail made *anno* 1 H. IV, so always as hereafter there be no better title proved for the defeating of this title and act."

<sup>219</sup> Hallow Even is October 31; the vigil of All Saints Day, which is November 1.

which protestation the said Duke and Earls required to be enrolled." <sup>220</sup>

The King continued to appreciate his ex-chancellor, *William Waynflete*, bishop of Winchester. In November (1460) he wrote an affecting letter to the pope bearing 'testimony to the bishop's innocence, his meritorious services and unblemished reputation.' <sup>221</sup>

*Francesco Coppini*, it has been seen, was a different sort of person, yet by a patent of Dec. 4, 1460, purporting to be '*auctoritate Parliamenti*,' it was decided that Coppini should be offered the first bishopric he might choose, which should become vacant (the two archbishoprics and the Sees of Lincoln, Winton, Durham and Bath and Wells only excepted). <sup>222</sup>

29. *After the battle of St. Albans, in Feb. 1461, King Henry was met by his Queen and son. When they moved in a northern direction, Edward, now duke of York, hastened to London. There Chancellor Nevill and others proclaimed him (Edward) King. Then Henry's reign practically ended.*

Although in the late Parliament the unfortunate King had been

<sup>220</sup> Cotton's Abr., p. 667, No. 29.

<sup>221</sup> Mr. Foss says: "During this anxious period his friend, Sir *John Fastolf*, died, leaving him one of his executors. The 'Paston Correspondence' (i, 102,) contains his instructions as to the execution of the will, which shew that he was a man of business and of a pious and liberal mind." Biogr. Jurid. Of *John Fastolfe*, Knight, a ward to John, duke of Bedford, Dr. Fuller says: "To avouch him by many arguments valiant, is to maintain that the sun is bright, though *since* the stage hath been overbold with his memory, making him a thrasonical puff and emblem of mock valour."—"Nor is our comedian excusable by some alteration of his name, writing him Sir *John Falstaff* (and making him the property of pleasure for King Henry the Fifth to abuse), seeing the vicinity of sounds entrench on the

memory of that worthy knight, and few do heed the inconsiderable difference in spelling of that name. He was made Knight of the Garter by King Henry the Sixth; and died about the second year of his reign." 2 Fuller's Worthies, ed. 1840, p. 455.

<sup>222</sup> Sir H. Ellis's 3d series of Orig. Let., vol. i, p. 88. Edward the Fourth, when the Pope's recall came, gave Coppini such support as he could by appointing him by a Patent of Nov. 20, 1461, to be his proctor at Rome for ecclesiastical causes and promotions (*Id.*, p. 89), and by granting to him three days afterwards an annuity of £100, secured upon the custom duties of Southampton and London, and payable at the Exchequer, till he could be provided within the kingdom with ecclesiastical preferment, granting to him at the same time, and to his two nephews, Bartholo-

unable to do anything in support of the interests of his son, yet those interests were still upheld by the Queen, and the Lords adhering to the house of Lancaster; and the Duke of York and Earl of Salisbury were unsuccessful in December. On the 21st they lost part of their force in a struggle at Worksop;<sup>223</sup> on the 29th they were overwhelmed at Wakefield.<sup>224</sup> "The Duke was killed in the battle; his son, the earl of Rutland, was slain by Lord Clifford, and the earl of Salisbury was taken prisoner and beheaded at Pomfret."<sup>225</sup>

Intelligence of the death of his father and brother reached Edward at Gloucester. Against him Jasper Tudor, earl of Pembroke (the king's half brother), and the earl of Wiltshire, were pitted; they were defeated at Mortimer's cross, near Wigmore, on the 3d of February (1460-61);<sup>226</sup> on the 17th the Queen's army defeated the earl of Warwick at St. Albans.

"Night saved the Yorkists from utter destruction. They separated and fled in different directions, leaving the King in his tent under the care of the Lord Montague, his chamberlain. He was soon visited by Margaret and his son, and embraced them with transports of joy."<sup>227</sup>

Henry and Margaret having moved from St. Albans in a northern direction, Edward and Warwick, who had met at Chipping Norton,<sup>228</sup> hastened to London. On the 28th they entered that city.

"On the 1st of March, the Chancellor, Bishop Neville, called a general assembly of the citizens at Clerkenwell and explained to them the title by which Edward, now duke of York, claimed the crown." They "received the instruction with applause, and proclaimed that he was and should be King. On the 3d, a council of the party was held at Baynard's Castle. Archbishop Bourchier, bishop Beauchamp, of Salisbury, bishop Neville" and others, "there took upon themselves to declare Edward the rightful King. On the 4th he was received in procession at Westminster, seized the crown and sceptre of the Confessor."<sup>229</sup>

mew and Thomas Coppini (and to the heirs, male and lineal descendants of each), the privilege of bearing in the upper portion of their shield of arms 'a white rose, our device.' " *Id.*, pp. 84, 85.

<sup>223</sup> Distant from London 146 miles.

<sup>224</sup> Distant from London 182 miles.

<sup>225</sup> 5 Lingard's *Engl.*, ch. 2, p. 164;

3 Stubbs's *Const. Hist.*, ch. 18, p. 188.

<sup>226</sup> Pembroke himself escaped; but his father, Owen Tudor, was taken and beheaded. 5 Lingard's *Engl.*, ch. 2, p. 165.

<sup>227</sup> *Id.*, p. 165.

<sup>228</sup> Distant from London 77 miles.

<sup>229</sup> 5 Lingard's *Engl.*, ch. 2, p. 166;

3 Stubbs's *Const. Hist.*, ch. 18, p. 189.

On that day Henry's reign practically expired.<sup>280</sup>

30. *Of Sir John Fortescue's career until the reign of Henry VI was practically ended, in 1461.*

As George Nevill, bishop of Exeter, took, in March, 1461, the oath as Chancellor to Edward IV, it may be that so soon as this fact became known to Henry VI and to Sir John Fortescue, the latter was made Henry's Chancellor.<sup>281</sup> But consistently with what is said under this title in its commencement on p. 744, a notice of Sir John's career is deemed proper in this work; whether he was or was not justified in calling himself (as he does in the title to his work, '*De Laudibus*') *Cancellarius Angliæ*,—a title which he reiterates in his retraction of what he had written against the House of York, by making the interlocutor in the dialogue say to him, 'Considering that ye were the chief *chancellor* to the said late King.'"<sup>282</sup>

"John Fortescue<sup>283</sup> is supposed to have been born at Norreis, the estate of his mother. The date of his birth must have been about the close of the fourteenth century. He received his education at Exeter College, Oxford, and pursued his legal studies at Lincoln's Inn, where he was a governor of the house from 1424 to 1429 (*Dugdale's Orig.*, 257). In Michaelmas term of the latter year he took the degree of a serjeant at law, and from that time his arguments frequently occur in the Year Books. In 18 and 19 Hen. VI, he acted as a judge of assize on the Norfolk circuit (*Kal. Exch.* iii, 381); and at Easter in the latter year, 1441, he was named one of

<sup>280</sup> *Id.*, pp. 189, 190. Henry and Margaret having returned to Yorkshire, Edward pursued them. On March 28, 1461, there was a battle at Ferrybridge; the next day the two hosts met at Touton, and in a bloody battle Edward was victorious. Margaret carried off her husband and son to Scotland. By the surrender of Berwick to the Scots in April, the fate of the house of Lancaster seems to have been recognized as final. *Id.*, p. 190.

<sup>281</sup> *Biogr. Britt.*, edi. 1750, vol. iii, p. 1990; cited in Lord Clermont's *Life of Fortescue*, pp. xxi, xxii, of Cincinnati, edi. 1874.

<sup>282</sup> Selden's Preface; cited in Foss's

*Biogr. Jurid.*

<sup>283</sup> Of his parentage, the most probable account seems to be "that his father was Sir John Fortescue, knighted by Henry V for his prowess in the French wars, and made governor of Meaux, which he had helped to reduce. This knight was a second son of William Fortescue of Winstone, and was himself seated at Shepham. He married Joan, the daughter and heir of Henry Norreis, of Norreis, in the parish of North Huish, in Devonshire, by whom he had several children, the two elder being" "Sir Henry, the Irish chief justice, and Sir John, who sustained the same rank in England." Foss's *Biogr. Jurid.*

the King's serjeants. So conspicuous were his merits that he was, without taking any intermediate step, raised to the office of chief justice of the King's Bench, on Jan. 25, 1442. In that court we have proof from the Year Books that he presided till Easter term 1460, and no new chief justice is recorded" under Hen. VI.<sup>284</sup>

"His salary on his appointment was 180 marks (£120) a year, besides £5. 16s. 11d. for a robe at Christmas, and £3. 6s. 6d. for another at midsummer. In addition to this he received in the following February a grant for life of one dolium of wine annually, to which a second was added in the next year. These two dolia (tunnes of wine) are expressly reserved to him by the act of resumption in 34 Hen. VI. In March, 1447, £40 a year was granted to him beyond his former allowances (Rymer xi, 28; Rot. Parl. v, 317)."<sup>285</sup>

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## CHAPTER XXV.

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### INSTITUTIONS IN THE REIGN OF EDWARD IV—1461 TO 1483.

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1. *Edward's reign begins March 4, 1461. George Nevill, bishop of Exeter, soon became Chancellor. Edward was crowned in June. His first parliament was in November; and opened by the Chancellor. Its proceedings as to Sir John Fortescue and others.*

From March 4, 1461, when Edward, son of Richard, duke of York, was proclaimed king by the name of Edward the fourth, "the legal recognition of his royal character begins and the years of his reign date."<sup>1</sup> Six days afterwards *George Nevill*, bishop of Exeter, took the oath as chancellor to Edward IV.<sup>2</sup>

<sup>284</sup> *Id.*

<sup>285</sup> *Id.* At the battle of Tooton on Palm Sunday, March 29, Fortescue was present, and when the field was lost fled with King Henry. That unfortunate monarch went first into Scotland, then into Wales, and afterwards lay concealed in the north of England until he was

betrayed." *Id.*; 3 Stubbs's Const. Hist., ch. 18, p. 195 and p. 201.

<sup>1</sup> Collyer's Engl., vol. 5, ch. 3, p. 150;  
<sup>2</sup> Stubbs's Const. Hist., ch. 14, p. 103;  
<sup>3</sup> *Id.*, pp. 189, 190.

<sup>2</sup> Rymer xi, 473, is cited in 2 Stubbs, p. 189, note 4; and in Foss's Biogr. Jurid.

After the victory at Tooton (March 29) Edward returned to London; he was crowned at Westminster on June 29.<sup>3</sup> His first parliament called May 23, to meet July 6, was delayed by the condition of the Scottish border and did not meet until November 11.<sup>4</sup> On the fourth of this month (November 1461), George, bishop of Exeter,<sup>5</sup> declared the cause of the Parliament; and on its third day the Commons presented Sir James Strangewaies to be their Speaker.<sup>6</sup> During the session there were statutes and ordinances;<sup>7</sup> and other proceedings affecting Henry VI, and many other persons.<sup>8</sup> Among the same is the following:

"Henry 6th, with certain of the persons aforesaid, *John Fortescue*, William Talbois, and other Esquires, gentlemen, priests and friars are attainted for being in field against King E. 4, in the bishopric of Durham, the 18th day of June last."<sup>9</sup>

2. *In 1462 repair of accident to spire of St. Paul's.*

After what was done in 1315 to St. Paul's (mentioned in ch. 18, § 15, p. 507), "the first accident which befel the church was the consequence of a violent tempest of thunder and wind which burst over the metropolis on the first of February, 1444. The lightning having struck the spire set it on fire; and although a priest succeeded in extinguishing the flames, a good deal of damage was done, so that it was not till the year 1462, that the gilded ball with the cross again made its appearance on the summit of the building."<sup>10</sup>

3. *Parliament of 3 Edw. IV opened by Chancellor Nevill. Cause of prorogation in 1464. May 1, the king married Elizabeth (Widville), Lady Gray. Statutes.*

In 3 Edw. IV, on April 29, (1463), a "declaration of the summons

<sup>3</sup> By Thomas Bouchier, archbishop of Canterbury. Foss's Biogr. Jurid.

<sup>4</sup> 3 Stubbs, p. 194.

<sup>5</sup> "In the presence of the King, sitting in the Chair of Estate in the Chamber *de Pinct*, within the palace of Westminster, and of the Lords and Commons." Cotton's Abr., p. 669, No. 1.

<sup>6</sup> *Id.*, No. 6.

<sup>7</sup> 2 Stat. of the Realm, p. 380 to 391.

<sup>8</sup> Cotton's Abr., p. 669 to 673; 3 Stubbs's Const. Hist., ch. 18, p. 195 to 197.

<sup>9</sup> Cotton's Abr., p. 61, No. 24. Where and how Sir John Fortescue was employed in this reign is mentioned in Foss's Biogr. Jurid., and in the present volume in this chapter, § 7 and 10, and in ch. 29, § 3.

<sup>10</sup> Penny Magazine for 1832, p. 57.



of the Parliament" was made by "George, bishop of Exeter and Chancellor of England."<sup>11</sup> There were several prorogations of this Parliament.<sup>12</sup> The cause of prorogation in 1464, from Feb. 20 to May 1, is assigned as below.<sup>13</sup>

"The same first day of May, the Lords and Commons being assembled in the great hall within the palace of the Archbishop of York, certain of the King's Letters patents made unto Richard, earl of Warwick and of Salisbury, were read, which authorized the said Earl to hold and continue the said Parliament from the said day unto the twenty-fifth of November then ensuing, at York. After the reading whereof the Abbot of Fountaines,<sup>14</sup> thereunto appointed by the King's Privy Seal, prorogued the same accordingly."

Nov. 25, in 4 Edw. IV, "in the hall of the said Archbishop of York, the King by like letters patents made to the said Earl of Warwick and Salisbury, for holding and proroguing the said Parliament from the same day unto the twenty-sixth day of January then ensuing, at Westminster, read; after which the Abbot of St. Marie's, of York, by the King's appointment, declared and prorogued the same accordingly."<sup>15</sup>

Together with the *assigned* cause for the prorogation on May 1,

<sup>11</sup> "In the presence of the King, sitting in the Chair of Estate in the Chamber *de Pinet*, in the palace of Westminster, and of the Lords and Commons." Cotton's Abr., p. 674. "The third day of the Parliament the Commons presented to the King *John Say*, Esquire, to be their Speaker." *Id.* pp. 674, 675, No. 7.

<sup>12</sup> On June 27 the Chancellor prorogued the Parliament unto Nov. 4. On that day "Thomas, Archbishop of Canterbury, the King's cousin, by the King's letters patent, held and continued the Parliament."—"The same 4th day the Chancellor, on the King's behalf and of his said Lieutenant, adjourned the said Parliament from the said day unto the twentieth of February then ensuing, at the city of York." Cotton's Abr., p. 675. Feb. 20, "at York, in the presence of the Lords and Commons, William, bishop of Lincoln, by the commandment of William, archbishop of York, the King's

commissary, by Letters Patents held the same Parliament, and adjourned the same over from the said day unto the first day of May then ensuing, at York aforesaid." *Id.*

<sup>13</sup> "For that the King was enforced to go in person to Gloucester for the repressing of conspiracy and rebellion against him." Cotton's Abr., p. 675, Nos. 13, 14.

<sup>14</sup> In Yorkshire, about 10 miles from Knaresboro', and 212 from London, is Ripon; about three miles from which was Fountain's abbey, the foundation whereof dates from 1132. Its ruins, on each side of the Swale, as developed by the proprietor of Studley Royal, are perhaps the most extensive and interesting remains of an old abbey to be found in England.

<sup>15</sup> Cotton's Abr., pp. 675, 676, Nos. 15, 16.

1464,<sup>16</sup> may be noticed the nature of the 'marches' in which Edward was 'busily occupied.'

It is said that *before that day*, he was married to Eleanor Talbot, daughter of the Earl of Shrewsbury; that the marriage was without any witnesses save Dr. *Stillington*, bishop of Bath, who officiated at and celebrated the marriage and in whose hands the contract was; and that he was enjoined to conceal the marriage.<sup>17</sup> Whether or no this be true of what occurred *before the first day of May, 1464*, yet the nature of the king's march *on that day* may not have been such as was contemplated by Parliament.

In the neighborhood of Grafton Regis,<sup>18</sup> in Northampton county, was a large mansion, the seat of the Lancastrian lord, Richard Widville or Woodville, lord Rivers,<sup>19</sup> whose daughter, Elizabeth,<sup>20</sup> while living there in retirement, with her parents, was in a 'secret manner, upon the *1st of May, 1464*,' married to King Edward at Grafton;<sup>21</sup> in a council at Reading, on Sept. 29, she was acknowledged as queen.<sup>22</sup>

Although in the same September, *George Nevill*, the chancellor, became archbishop of York; yet the marriage was distasteful to his brothers, the earl of Warwick and the lord Montague; and was also distasteful to the chancellor himself.<sup>23</sup>

No such distaste was manifested by that ex-chancellor, *Thomas Bourchier*, archbishop of Canterbury, who in 1461 had reconciled himself to the ruling power and crowned Edward IV. Soon he

<sup>16</sup> "That the King was busily occupied in the Marches of the North for the repressing of rebels, and defence of a foreign invasion." Cotton's Abr., p. 676.

<sup>17</sup> 8 Harl. Miscel., ed. 1810, p. 515; Cotton's Abr., pp. 711, 712; Walpole's Historic Doubts, p. 40 to 46, of ed. 1768; 6 Collyer's Engl., p. 3; 2 Hume's Engl., ch. 22, p. 492, of N. Y. ed. 1850. As to Stillington, see further in § 3.

<sup>18</sup> Distant from Stony Stratford 5, from Northampton 9, and from London 57 miles.

<sup>19</sup> Who had been steward to the duke

of Bedford, and had married his widow, Jacquetta, of Luxemburg. 3 Stubbs's Const. Hist., ch. 18, p. 200.

<sup>20</sup> Widow of John Gray, son and heir to lord Ferrers of Groby, possessor of the ancient domain of Brudgate. Miss Strickland's Queens of England, vol. 3, p. 208, of Phila. ed. 1857.

<sup>21</sup> *Id.*, p. 211; 3 Turner's Engl., ed. 1825, pp. 262, 263.

<sup>22</sup> 5 Lingard's Engl., ch. 3, pp. 184, 185, of Boston ed. 1854.

<sup>23</sup> *Id.*, p. 186; 3 Stubbs, p. 200.

entertained the king and queen for several days at Canterbury, on a visit to pay their devotions at Becket's shrine. By that time he had recovered his last honour in the Church, having been created cardinal-presbyter, by the title of St. Cyriacus in Thermis, on Sept. 18, 1464.<sup>24</sup> The Queen was "crowned with all due splendour on ascension day of the following year."<sup>25</sup>

Of the parliament summoned the 29th day of April, in 3 Edw. IV, and by prorogations and adjournments continued till the 21st of January, in 4 Edw. IV, there are statutes and ordinances.<sup>26</sup>

4. *After the battle of Hexham in 1464, Henry VI taken and committed to the Tower. Contest between the Earl of Warwick and the Wydevilles. During the Parliament of 7 Edw. IV, the Great Seal was withdrawn from Archbishop Nevill and entrusted to Bishop Stillington. Prorogations; and statutes. As to coming on a subject's land and making on it trenches or bulwarks for defence of the realm.*

After the battle of Hexham<sup>27</sup> (in 1464, May 8), Henry VI had retired into Lancashire in disguise.

"A monk betrayed his retreat, and in July he was taken at dinner, in Waddington Hall, by some deception. He escaped for a while into an adjoining wood, but was there again found, and brought towards London. Warwick met him at Islington and had the cruelty to subject" him "to the indignity of having his legs bound with leather straps to the stirrups of the horse. In this degraded state" "he was led through Cheap and Cornhill to the Tower, where he remained for the next five years."<sup>28</sup> Now began the contest be-

<sup>24</sup> "He was not, however, invested with the red hat till May 31, 1472; and he is first called cardinal in the Rolls of Parliament of November in that year." Cotton's Abr., p. 693, No. 9; Foss's Biogr. Jurid.

<sup>25</sup> 2 Mackintosh's Engl., p. 38, of Phila. edi. 1831; 3 Turner's Engl., edi. 1825, p. 263.

<sup>26</sup> 2 Stat. of the Realm, p. 392 to 402, and p. 403 to 408; 3 Stubbs's Const. Hist., ch. 18, pp. 198, 199; Stat. 3 Edw. IV, c. 4, was under consideration in 44 Eliz., in the case of "*Monopolies*," 11

Rep. 87 b.

<sup>27</sup> (In Northumberland county,) 285 miles from London, 9 from Allendale, and 5 from Corbridge.

<sup>28</sup> 3 Turner's Engl., edi. 1825, pp. 259, 260; 2 Mackintosh's Engl., p. 39, of Phila. edi. 1831. He was allowed now and then to receive visitors in the Tower. When pressed by some impertinent person to justify his usurpation, he used to answer, "My father had been king of England, possessing his crown in peace all through his reign; and his father, my grandfather, had been king of the same

tween the earl of Warwick and the Wydville's.<sup>29</sup>

During the parliament at Westminster, in 7 Edw. IV, a change was made in the Chancellorship. "William, Bishop of Lincoln, in the absence of George, Archbishop of York, *Chancellor of England*, by the king's commandment, declared the cause of the summons of the same Parliament."<sup>30</sup> It thus appears that when the Parliament began, George Nevill, Archbishop of York, though absent from the Parliament, was yet Chancellor of England. The 8th of June was the last day of his chancellorship; his successor was *Robert Stillington*<sup>31</sup> bishop of Bath and Wells.

Mr. Stubbs states that in June, 1467, "the session" (of parliament)

realm. And I, when a boy in the cradle, had been without any interval crowned in peace, and approved as king by the whole realm, and wore the crown for well nigh forty years, every lord doing royal homage to me, and swearing fealty as they had done to my forefathers; so I may say with the Psalmist, 'The lines are fallen unto me in a pleasant place, yea, I have a goodly heritage;' 'My help cometh of God, who preserveth them that are true of heart.'" 3 Stubbs's Const. Hist., ch. 18, p. 201, Green's Short Hist., ch. 6, p. 296; Hist. of Engl. Peop., book 4, ch. 6, p. 573, of vol. 1.

<sup>29</sup> 3 Stubbs's Const. Hist., ch. 18, p. 201. Some promotions of the relations of the king's wife were very offensive to Warwick. *Id.*, pp. 201, 202; 3 Turner's Engl., ed. 1825, p. 264 to 266.

<sup>30</sup> It was declared "in the presence of the King, sitting in his Chair of State in the Chamber *de Pinet*, in the palace of Westminster and of the Lords and Commons." Cotton's Abr., p. 680, No. 1. The third day of the Parliament the Commons declared that they "had chosen Sir *John Say*, Knight, to be their Speaker." *Id.*, No. 6.

<sup>31</sup> Son of *John Stillington*, Esq., (probably of the place of that name in Yorkshire,) who possessed property at Nether Acaster, a short distance from York, of which city one of his progenitors was bailiff in 1388. Becoming a student of the college of All Souls, in the university of Oxford, Robert there took the degree of doctor in both laws. His first ecclesiastical preferment was a canonry in the cathedral of Wells in 1445, which was quickly followed by the treasurership of the same church in 1447; the rectory of St. Michael, Ouse Bridge, in 1448, and the archdeaconry of Taunton in 1450. He became a canon of York in 1451, and dean of St. Martin's, London, in 1458. He was strongly attached to the house of York. On its attaining power he was appointed keeper of the Privy Seal. (*Devon's Issue Roll*, 484). In the acts of resumption passed in the early parliaments of Edward IV, the grants made to him in this character, and also as dean of St. Martin's, are all excepted in his favour. (*Rot. Parl.* 5, 470, 578.) He became archdeacon of Berks in 1463, and of Wells in 1465, and bishop of Bath and Wells January 11, 1466. *Foss's Biogr. Jurid.*

"was opened on the 3d with a discourse from the bishop of Lincoln in the absence of the Chancellor"; that "on the 8th the absence of the Chancellor was explained: the king and Lord Herbert visited archbishop Nevill in his house at Westminster and took from him the Great Seal; it was given the next day to Robert Stillington, bishop of Bath."<sup>32</sup>

Whatever may have been the day on which Stillington was appointed Lord Chancellor—whether it was 'on June 20, 1467,' as stated by Mr. Foss, or on a somewhat earlier day, as supposed by Mr. Stubbs, it is quite certain that he was in the chancellorship before or on July 5.

"The fifth day of July *Robert, Bishop of Bath and Welles, and Chancellor of England*, by the King's commandment, in the presence of the King, Lords and Commons, answered to certain requests of the Commons."

"After which, by the King's commandment, he also prorogued the Parliament" "to the 6th day of November," "at Reding."

Nov. 6, "at Reding, the same chancellor, by the King's commandment, and in the presence of the King, Lords and Commons, prorogued the same Parliament" unto May 6, at Reding.<sup>33</sup>

"The same Chancellor," on May 6, in 8 Edw. IV, "at Reding in the presence of the King, sitting in the chair of estate in the chamber within the abbey there, and of the Lords and Commons there, by the King's commandment, adjourned the Parliament" unto May 12, at Westminster.<sup>34</sup>

May 17. "In the presence of the King, then sitting in the chair of estate at Westminster and of the Lords and Commons, the Chancellor made an eloquent oration, beginning with justice" and shewing its effects.<sup>35</sup>

Of this parliament there are statutes and ordinances.<sup>36</sup>

Lord Coke says: "When enemies come against the realm to the sea-coast, it is lawful to come upon my land adjoining to the sea-coast, to make trenches or bulwarks for the defence of the realm, for every subject hath benefit by it. And therefore by the common law, every man may come upon my land for the defence of the realm, as appears 8 Ed. IV, 23. And in such case on such extremity they may dig for gravel, for the making of bulwarks; for this is for

<sup>32</sup> 3 Stubbs's Const. Hist., ch. 18, pp. 202, 203.

<sup>35</sup> *Id.*, No. 24.

<sup>33</sup> Cotton's Abr., p. 681, Nos. 15, 16, 17.

<sup>36</sup> In 2 Stat. of the Realm, p. 418 to 423, and p. 424 to 430.

<sup>34</sup> *Id.*, p. 682, No. 18.

the public, and every one hath benefit by it; but after the danger is over, the trenches and bulwarks ought to be removed, so that the owner shall not have prejudice in his inheritance."<sup>37</sup>

5. *Under what king and in whose chancellorship was the case in 9 E. IV, as to one of two obligors suing in Chancery when the obligee favoured the other. In 1469 was the spectacle of two rival kings, each confined in prison; Henry in the Tower, Edward in Yorkshire. Of kings, chancellors and parliament until April, 1471.*

"If two be jointly and severally bound to pay money and the obligee will give longer day (or other favour) to the one and then will sue the other for the debt, he which is sued shall sue in chancery."

Sir George Cary reports this case as in 9 E. IV.<sup>38</sup> Under what king, and in whose chancellorship, may be difficult of ascertainment; but may perhaps be inferred from what follows:

In 1469, "soon after midsummer, the earl of Warwick, archbishop Nevill, and Clarence, went over to Calais, and the archbishop married the Duke" (of Clarence) "to his niece, Isabella Neville."<sup>39</sup>

On July 26, (1469) was a memorable conflict<sup>40</sup> on a plane called Danesmoor (near Edgecote) about three miles from the town of Banbury, and called "the battle of Banbury."<sup>41</sup>

"England exhibited at this moment the *extraordinary spectacle of*

<sup>37</sup> 12 Rep. 12, 13. Lord Coke says: "For the commonwealth a man shall suffer damage; as for saving of a city or town a house shall be plucked down if the next be on fire; and the suburbs of a city, in time of war for the common safety, shall be plucked down; and a thing for the commonwealth every man may do, without being liable to an action, as it is said in 3 H. VIII, fol. 15." 12 Rep. 13.

<sup>38</sup> 9 E. IV, 41. Cary's Rep., p. 2.

<sup>39</sup> 3 Stubbs's Const. Hist., ch. 18, p. 205. Clarence "married Isabel in the Lady Church of Calais, in the presence of the Countess and her daughter Anne."

Miss Strickland's Queens of England, vol. 3, p. 244, of Phila. edi. 1857. Upon this marriage there are observations in 3 Turner's Engl., edi. 1825, p. 269.

<sup>40</sup> 5 Collyer's Engl., p. 172; 2 Hume's Engl., ch. 22, p. 458.

<sup>41</sup> In Thomas Dugdale's England and Wales, title *Banbury*, it is said "The Yorkists were led by the Earls of Stafford and Pembroke, who had possession of the town. After one of the most determined conflicts ever recorded, the Yorkists were routed; the Earl of Pembroke and his brother were both taken and beheaded, and *Edward IV himself made a prisoner* a few days after."

*two rival kings, each confined in prison; Henry in the Tower, Edward in Yorkshire.*"<sup>42</sup>

"Edward, left alone in the midst of a hostile country, surrendered himself as a prisoner to archbishop Neville, who carried him off, first to Coventry and then to Middleham. The victorious lords do not seem to have known what to do with their prisoner. After making some conditions with the Nevilles, he was allowed to resume his liberty, and returned to London."<sup>43</sup>

In March, "on the 23d, Edward issued a proclamation against his brother and Warwick, who, having failed to find help in Lancashire, and to effect a landing at Southampton, had fled to France. In France they were brought into communication with queen Margaret, and Warwick in all sincerity undertook to bring about a new revolution."<sup>44</sup>

Warwick's daughter, the lady Anne Nevill, was *betrothed* to Edward, prince of Wales, son of Henry the sixth.<sup>45</sup> Warwick, on Aug. 4, left his countess and the Lady Anne with Queen Margaret and her son.<sup>46</sup> On Sept. 13, Warwick landed at Dartmouth; Edward IV "fled to Flanders on Octo. 3; on the 5th archbishop *Nevill* and bishop *Waynflete*, took Henry VI from the Tower; queen Elizabeth took sanctuary at Westminster."<sup>47</sup>

<sup>42</sup> 5 Lingard's Engl., ch. 3, p. 195.

<sup>43</sup> 3 Stubbs's Const. Hist., ch. 18, pp. 206, 207. Mr. Foss says: "The archbishop who had treated the King with the greatest courtesy during his detention, accompanied him to London, where the King issued a general pardon to all concerned in the outbreak." Biogr. Jurid.

<sup>44</sup> 3 Stubbs's Const. Hist., ch. 18, pp. 207, 208.

<sup>45</sup> Chronicle of Croyland, cited in Walpole's Historic Doubts, edi. 1768, p. 12.

<sup>46</sup> Miss Strickland's Queens of England, vol. 3, p. 193, and p. 245, of Phila. edi. 1857. Miss Strickland's view is, that Ann was married to Edward in the latter part of July, or beginning of August. *Id.* From the Harl. MS., Mr. Turner had considered it clear "that she was not actually married to the Prince when her father left France. It was an alliance required by Warwick in July, 1470, and refused by Margaret.

She at last assented to it in August, not for its solemnization at that time, but only as a conditional contract. The Prince *was* to marry her if Warwick recovered the kingdom for him."

3 Turner's Engl., edi. 1825, p. 346. This is the same passage wherein Turner alludes to "Shakspear's satirical scene of Richard, the alleged murderer of her assumed husband, courting and winning her."

<sup>47</sup> 3 Stubbs, p. 208. "Queen Elizabeth, with her family, had remained in the Tower, but perceiving that the tide of loyalty had turned in favour of Henry, she left that fortress secretly, and fled with her mother and three daughters to the sanctuary of Westminster, where she was shortly afterwards delivered of a son." 5 Lingard's Engl., ch. 3, p. 204. "On the 1st of November, 1470." Miss Strickland's Queens of England, vol. 3, p. 220, of Phila. edi. 1857.

*Richard Fryston*, a clerk or master in the Chancery,<sup>48</sup> had, during the absence of the chancellor, *Bishop Stillington*, from March 7 to May 12, 1470, custody of the Great Seal. During these two months *bills in chancery were addressed to him as keeper*, and not to the chancellor, although the latter still retained his office and received the Seal back from Fryston's hands on May 12.<sup>49</sup>

Of what occurred in the fall of 1470, less seems to have been ascertained by Lord *Campbell*<sup>50</sup> than by Mr. Stubbs.

'On the 9th of October, writs for the election of coroners and verderers, and on the 15th the summons for parliament, were issued in Henry's name. On the 26th of November, Henry was made to hold his parliament'; — "thirty-four lords were called to it." — "*Archbishop Neville*, who had been *made chancellor*, preached on the words, 'Turn O backsliding children.' The crown was again settled on Henry, with remainder, in case of the extinction of the house of Lancaster, to the duke of Clarence."<sup>51</sup>

"The collapse of Edward's power was so complete, that for some weeks neither he nor his enemies contemplated the chance of a restoration."<sup>52</sup> The "*readaptio regie potestatis*, or forty-ninth year of Henry VI extended from October 9, 1470, to the beginning of April, 1471."<sup>53</sup> Archbishop *Nevill* appears as chancellor in three several documents dated respectively December 20, 1470, and February 13 and 16, 1471.<sup>54</sup>

6. *Of the mastership of the Rolls during this reign until April, 1471.*

*The king's command that all matters in his Court of Chancery should be determined "according to equity and good conscience, and to the old course and laudable customs of the same court."*

On the accession of Edward IV the new grant to *Thomas Kirkeby*

<sup>48</sup> Which office he held since 1450, and continued to hold as late as 1472, 12 Edw. VI. (Rot. Parl. v, 227-571, vi, 3.) Foss's Biogr. Jurid.

<sup>49</sup> (Introd. Proceedings in Chancery, Temp. Eliz., vol. i.) Biogr. Jurid.

<sup>50</sup> 1 Lives of the Chancellors, pp. 388, 389, of 2d ed. (1846), pp 363, 364, of Boston ed. 1874.

<sup>51</sup> 3 Stubbs's Const. Hist., ch. 18, p. 208.

<sup>52</sup> *Id.*, 209. <sup>53</sup> *Id.*, 208, note 3.

<sup>54</sup> (Rymer xi, 672, 681, 692.) He was rewarded with the grant of the manors of Wodestoke, Hangburgh, Wotton and Stonefield, and the hundred of Wotton for life." Foss's Biogr. Jurid.



of the Mastership of the Rolls was only '*quamdiu se bene gesserit*.' In little more than nine months he was superseded.<sup>55</sup>

*Robert Kirkham*<sup>56</sup> succeeded him Dec. 23, 1461. The Great Seal was placed in his custody during the absence of the lord chancellor, *George Nevill*, in 1463, from August 23 to October 25, and in 1464, from April 10 to May 14; and was put in his hands to transact the business of the chancery in 1467, from June 8 to 20.<sup>57</sup>

During the Chancellor's absence in 3 E. IV (1463), the Great Seal was committed to Robert Kirkham, "with the same special authorities and powers, and almost in the same words *mutatis mutandis* as the Great Seal, in the preceding reign, was delivered to John Frank;<sup>58</sup> which may be seen in ch. 24, § 13, pp. 789, 790.

But in June, 1467, when the Great Seal was taken from George Nevill (Archbishop of York and Chancellor) and delivered to Robert Kirkham, Master or Keeper of the Rolls, the delivery to him was *sub modo et forma sequentibus*, viz:

"That the course of the law and ministration of justice might not be left to seal all manner of writs, letters patents, &c.

"That he used not the said seal but in the presence of the Earl of *Essex*, Lord *Hastings*, Sir *John Fogg*, Sir *John Scott*, three, two or one of them; and when the sealing is done, to put it again into the bag, to be sealed with the seals of the said four persons, or him of them that shall be present.

And that the said Keeper, every day before night, deliver to one of the said persons the said bag with the King's Great Seal, so sealed, and on the morrow receive it again and use it again in manner and form aforesaid.

And over this, the King willed and commanded that all manner of matters to be examined and discussed in his court of chancery should be directed and determined *according to equity and good conscience*, and to the old course and laudable customs of the same court, so that if in any such matters, any difficulty or question in the law happen to arise, that he therein take the advice of some of the King's Justices, so that right and justice may be duly administered" (truly ministred) "to every man."<sup>59</sup>

<sup>55</sup> He was treasurer of Exeter Cathedral when he died, in 1476. Foss's Biogr. Jurid.

<sup>56</sup> A Master in Chancery from 1454, 32 Hen. VI, till the end of that reign. *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Legal Judic. in Ch., ed. 1727, ch. 2, p. 37.

<sup>59</sup> *Id.* There is a slight difference between the phraseology on p. 37 and that on pp. 112, 113; for example, the words 'duly administered' are on p. 37, and 'truly ministred' on p. 113.

Mr. Foss says of Kirkham,

He "continued Master of the Rolls till the restoration of Henry VI, on October 9, 1470; and it would seem that he was not removed during the four following months."—"It appears probable that he had been for some time ill, which perhaps was the cause of his not being disturbed in his office by Henry VI; and as he was not restored to it when Edward IV resumed the throne, he probably died just before Morland's appointment."<sup>60</sup>

*William Morland* held the office of Master of the Rolls only during the last two months of the temporary restoration of Henry VI, between February 12 and April 20, 1471. He had previously been one of the Masters in Chancery; and after Edward's re-conquest of the throne he fell back into his former place."<sup>61</sup>

7. *Events in the spring of 1471. At Tewkesbury, May 4, Queen Margaret and Sir John Fortescue taken prisoners; and the Prince of Wales killed. May 21, Edward IV re-entered London. Death of Henry VI. Its cause; and his character. What could now influence Fortescue.*

"In March, 1471, Edward, who had obtained a small force from his brother-in-law of Burgundy, sailed for England,<sup>62</sup> and after being repulsed from the coast of Norfolk, landed in Yorkshire on the 14th, at the very port at which Henry IV had landed in 1399."<sup>63</sup>

The letter of Sir John Paston (Letters ii, 60), who fought for King Henry at Barnet has not prevented unfavourable views of the conduct of Warwick's brother, Nevill, the Archbishop and Chancellor.<sup>64</sup>

According to Mr. Foss, "Edward marched to the capital, where the recorder, Urswyke, by the archbishop's order, admitted him, on April 11, through a postern in the walls; and Henry, who had been purposely kept out of sanctuary, became again the prisoner of his rival. Two days after, the archbishop, regardless of the ruin in which he involved his brother, took the oath of fidelity to Edward

<sup>60</sup> Biogr. Jurid.

<sup>61</sup> "Acting like his brethren as a receiver of petitions in parliament until 4 Henry VII. (Rot. Parl. vi, 167-409.) In Feb., 1470, he was installed dean of Windsor, but was deprived in Octo., 1471, a few months after Edward's return." (Le Neve 375.) Biogr. Jurid.

<sup>62</sup> 3 Turner's Engl., edi. 1825, pp. 299, 300.

<sup>63</sup> *Id.*, p. 301; 3 Stubbs's Const. Hist., ch. 18, p. 209.

<sup>64</sup> 3 Turner's Engl., edi. 1825, p. 313, 314; 5 Lingard's Engl., ch. 3, p. 208; Foss's Biogr. Jurid.

on the Sacrament at St. Paul's cross, and immediately received a full pardon for all offences he had previously committed."<sup>65</sup>

Mr. Stubbs says: "Henry, under the guidance of archbishop Neville, had attempted to rouse the citizens to resistance, but had completely failed. Edward, on the other hand, was received with open arms by archbishop Bourchier and the faithful Yorkists. On the 13th he marched out of London, with Henry in his train, to meet Warwick. He encountered him at Barnet<sup>66</sup> the next day, Easter day, and totally defeated him. Warwick himself, and Montague, were killed in the battle or in the rout."<sup>67</sup>

On May 4, at Tewkesbury,<sup>68</sup> Edward routed Queen Margaret's army with great slaughter. She, and Warwick's daughter (the Lady Ann), and Sir *John Fortescue*, were among the prisoners.<sup>69</sup>

Whether or no the Prince of Wales was a prisoner, and murdered, has been a question.<sup>70</sup> Mr. Turner cites Harl. MSS.; and remarks:

"That this authentic MS. not only gives no sanction to the popular tale of Edward's calling, the Prince before him rebuking him for his opposition, and striking him for his answer, and of Gloucester and Clarence stabbing him; but declares that he was slain in the field."<sup>71</sup>

On May 21 Edward reentered London in triumph. The same night is mentioned as the time of King Henry's death in the Tower, where he had been replaced after the battle of Barnet. The words of an old manuscript are—

*"Post bellum de Tewksburi Henricus nuper Rex Angliæ repositus in Turri London. in Vigilia Ascensionis Domini ibidem feliciter*

<sup>65</sup> (Rymer 709, 710.)

<sup>66</sup> Within eleven miles of London.

<sup>67</sup> 3 Stubbs's Const. Hist., ch. 18, p. 210.

<sup>68</sup> 103 miles from London.

<sup>69</sup> 3 Stubbs's Const. Hist., ch. 18, p. 210.

<sup>70</sup> Leland's Collectures, by Hearne, vol. 2, 505; cited in Ld. Clermont's Life of Fortescue, pp. xxxv and xxxvi, of Cincinnati ed. 1874; Walpole's Historic Doubts, ed. 1768, p. 4 to 7; 5 Collyer's Engl. 101; 2 Hume's Engl., ch. 22,

p. 471, of N. Y. ed. 1850.

<sup>71</sup> The extract from the Chronicle of Tewkesbury, copied by Stowe, mentions that the Prince was slain in the field of Gaston, beside Tewkesbury. 2 Turner's Engl., ed. 1825, p. 335, 336; citing Harl. MSS. 545, p. 102. Dr. Lingard sees no good reason to dispute Stowe's narrative. 5 Lingard's Engl., ch. 3, p. 211, note. Mr. Stubbs considers that the young Prince was "killed on the field." 3 Stubbs's Const. Hist., ch. 18, p. 210.

*moriens per Thames in navicula usque ad Abbatium de Chertsey deductus, ibi sepultus est.*"<sup>72</sup>

The words *feliciter moriens* give support to Horace Walpole<sup>73</sup> and Sharon Turner. Mr. Turner considers "that Henry was so shocked at the tidings of the death of his son, the irretrievable defeats and loss of his friends, and the captivity of his Queen, that his frame sank under the effect of the sudden communication."<sup>74</sup> This deserves to be weighed in connection with the expression by Mr. Stubbs as to Henry, that "it is most probable that he was slain secretly." Further Mr. Stubbs says:

"On Wednesday, the 22d of May, his body lay in state at S. Paul's and Blackfriars, and on Ascension day he was carried off to be buried at Chertsey."<sup>75</sup>

Whereas in the words mentioned above, as from an old manuscript, "*in Turri London. in Vigilia Ascensionis Domini*"<sup>76</sup> precede, and are in close connection with, '*ibidem feliciter moriens*;' and there is silence as to the day of carriage to, and burial at, Chertsey.<sup>77</sup>

Henry "was without doubt most innocent of all the evils that befel England because of him. Pious, pure, generous, patient, simple, true and just, humble, merciful, fastidiously conscientious, modest and temperate, he might have seemed made to rule a quiet people in quiet times."—"For the throne of England, in the midst of the death-struggle of nations, parties and liberties," he was not qualified.

But "he left a mark on the hearts of Englishmen that was not soon erased."<sup>78</sup>

Sir John Fortescue had been "energetically negotiating for the restoration of King Henry, and did not return with the Queen to England till April, 1471, after the battle of Barnet. His age did not prevent him from being present at the battle of Tewkesbury on May

<sup>72</sup> "*Scala Mund. MS., inter MSS. Norfolc. in Off. Armor., N. S.,*" (the author of which lived in the reign of E. IV.) is quoted in a letter of May 4, 1751, from Mr. T. Carte in 2 Aubrey's Letters, edi. 1813, pp. 134, 135.

<sup>73</sup> Historic Doubts, edi. 1768, p. 7.

<sup>74</sup> 2 Turner's Engl., edi. 1825, p. 344.

<sup>75</sup> 3 Const. Hist., ch. 18, p. 211.

<sup>76</sup> The day on which the ascension of the Saviour is commemorated—often

called Holy Thursday—is a moveable feast, always falling on the Thursday, but one before Whitsuntide.

<sup>77</sup> "Some years later, Henry's body was, by order of Richard III, removed from Chertsey to Windsor, and there buried with great funeral solemnity." 5 Collyer's Engl., p. 192; 4 Turner's Engl., ch. 2, edi. 1825, p. 85.

<sup>78</sup> 3 Stubbs's Const. Hist., ch. 18, pp. 130, 131.

4, 1471, where (as has been stated in this section, p. 831,) he was taken prisoner; but it no doubt exempted him from suffering under the subsequent execution of the Lancasterians. His royal master and his princely pupil being now both dead, no hope could remain for the party to which he had been devoted. Further opposition therefore to the ruling powers would have been fruitless, and the desire of peace for the short remainder of his life, and of obtaining a restoration of his property for his family, was probably all that could now influence him."<sup>79</sup>

8. *John Alcock Master of the Rolls from April 1471. In what case and when Choke, J., sat with the Master. In March, 1472, Alcock was succeeded as Master by John Morton. How Ex-Chancellor Nevill spent his latter years.*

*John Alcock*<sup>80</sup> superseded William Morland in the office of Master of the Rolls soon after the battle of Barnet, to-wit: April 29 in 11 Edw. IV (1471); and may, under power from the crown, have been sitting in that year in Trin. T.

Then, in an Audita Querela, brought in chancery to avoid an execution upon a statute staple certified into the Petty-bag, the Master of the Rolls sat, and was assisted by Justice Choke, a learned judge. Upon this occasion the Master of the Rolls said, 'We are in chancery, where our power is to adjudge not only according to law, but conscience'; *Choke, J.*, answered. In this case, 'you are judge according to the course of the common law'; and then the Master of the Rolls said, 'he would consider of it till the next term,' (*Et puis il dit que il voil estre avise tanque al prochain term*).<sup>81</sup>

Alcock, in 1471, on August 26, was appointed a commissioner to

<sup>79</sup> Foss's Biogr. Jurid. There is further mention of him in this chapter in § 10, and in ch. 29, § 3.

<sup>80</sup> Born at Beverley, in Yorkshire, where his father, William Alcock, sometimes burgess of Kingston-upon-Hull, was in circumstances sufficiently easy to send John first to the grammar school there, and then to Cambridge, where he took the degree of Doctor of Laws in 1466. He was collated, in 1461, to the church of St. Margaret's, New Fish street, London, and subsequently received two prebends, one of Salisbury, the other of St. Paul's. Next he was advanced April 29, 1462, to the deanery

of the chapel of St. Stephen in the palace of Westminster. Bale (who wrote about half a century after his death) describes him as so devoted from his childhood to learning and piety, growing from grace to grace, that no one in England was more renowned for sanctity. In March, 1470, (a few months before the restoration of Henry VI,) he was one of the ambassadors to the King of Castile. (Rymer xi, 653.) Foss's Biogr. Jurid.

<sup>81</sup> Year Book 11 E. IV. 8b; 9a; cited and remarked on in Legal Judic. in Ch., edi. 1727, ch. 5, p. 207 to 213.

treat with the Scotch ambassadors for a perpetual peace; and in 1472, in March, on the 16th, retired from the Mastership.<sup>82</sup>

Whereupon *John Morton*<sup>83</sup> was appointed thereto. In 1473, the Great Seal was several times deposited with him as keeper.<sup>84</sup>

Archbishop Nevill, who had made his peace after the battle of Barnet, was in April, 1472, despoiled of his wealth; he spent the rest of his life in captivity or mortified retirement.<sup>85</sup> Accounts of the matter vary somewhat as to details.<sup>86</sup>

Mr. Foss says: "Under the mask of friendship," Edward "had agreed to hunt at the Moor with the prelate, who accordingly prepared a magnificent entertainment, embellished with all the plate he possessed, besides much that he had borrowed, to do honour to the occasion. But on the day *before*<sup>87</sup> he was summoned to the king's presence, and immediately imprisoned on a pretended charge; the riches which he had thus foolishly exposed were confiscated, and the

<sup>82</sup> Foss's Biogr. Jurid. On the 17th he was made bishop of Rochester. *Id.*

<sup>83</sup> Born either at Bere Regis, or at Milborne, St. Andrew, in Dorset county; places not above three miles apart. He was son of Richard Morton of an ancient Nottinghamshire family; was educated in Cerne abbey, and is said to have been a monk there. It is certain, however, that he was sent to Balliol College, Oxford, where he took the degree of doctor in both laws. His conduct and learning caused him to be appointed one of the commissaries of the university in 1446, and moderator of the civil law school. In 1453 he was made principal of Peckwater Inn. Commencing his public career as an advocate in the Court of Arches, he soon attracted the notice of Archbishop Bourchier, to whose friendship and estimation of his talents he owed several of his advancements in the church and the State. In 1456, while that prelate still held the Great Seal, Morton was placed about the person of Edward, Prince of Wales, as his chancellor; and was also made clerk or master in chancery. His

ecclesiastical preferments were numerous.

On the dethronement of Henry VI, neither his clerical nor official character prevented him from joining his unfortunate sovereign in the field of Towton on Palm Sunday, 1461. He escaped from the battle, and accompanied Queen Margaret to Flanders. Beyond his being among those who were attainted of high treason in the parliament of the following November, he is not mentioned during the first ten years of Edward's reign, nor in the short restoration of Henry VI. He obtained a pardon in July, 1471, and afterwards a reversal of his attainder. Foss's Biogr. Jurid.

<sup>84</sup> *Id.* "At the end of that year he was sent with Sir Thomas Montgomery on an embassy to Nuys, in Germany, then under siege, to negotiate a treaty with the Duke of Burgundy. (Paston Letters ii, 78, 90.) *Id.*

<sup>85</sup> 3 Stubbs's Const. Hist., ch. 18, p. 212.

<sup>86</sup> 5 Lingard's Engl., ch. 3, p. 215.

<sup>87</sup> So printed on p. 478 of Biogr. Jurid., Boston edi. 1870.

revenues of his bishopric seized into the king's hand. In the list of the plunder a magnificent mitre is mentioned, the jewels of which were so large and precious that they were appropriated by the king to form a crown for himself. His confinement, which was sometimes at Calais and sometimes at Guisnes, lasted for about three years; but eventually, through the intercession of his friends, he procured his release, and returned to England in December, 1475. He did not long survive his liberation. Although only in the prime of life, he sank under his disgrace; and dying at Blithlaw on June 8, 1476, was buried in his own cathedral without tomb or gravestone.

"He is spoken of as a patron of scientific men; but no literary character can counteract the unfavorable sentence which every honest man must pronounce against him, on the manifest proofs which his life offers of fickleness, deceit and treachery."<sup>88</sup>

9. *Of John Alcock and Chancellor Stillington. By which of them parliament was opened on Octo 6, 1472. Stillington retired from the chancellorship in 1473, between April 8 and October 6. Henry Bourchier, earl of Essex, was Keeper of the Great Seal from June 23 until July 27, when Laurence Booth, bishop of Durham, became chancellor. He was succeeded in 1474 by Thomas Rotheram, bishop of Lincoln.*

We have no particular account of the conduct of *Robert Stillington*, bishop of Bath and Wells, during the few months that the Great Seal was out of his hands and in those of Archbishop *Nevill*. But in February, 1471-2, he obtained a general pardon for all crimes committed by him.<sup>89</sup> Speaking of *John Alcock*, in 1472, Mr. Foss says:

"On Sept. 20, the Great Seal was placed in his hands, when the lord chancellor, Bishop *Stillington*, gave up the duties on account of a temporary illness (Claus. 12 Edw. IV, m. 16). He opened the parliament as keeper on Oct. 6; and the lord chancellor, having recovered, prorogued it on April 5, 1473 (Rot. Parl. vi, 3, 9, 41)."<sup>90</sup>

Information that seems more precise is furnished in the volume containing what was extracted from records in the Tower, printed and published in 1657. Therein it is stated that in 12 Edw. IV, on Octo. 6 (1472), a "declaration of the summons of the Parliament" was made by "*Robert, bishop of Bath and Wells, Chancellor of*

<sup>88</sup> Biogr. Jurid.

633, of Boston ed. 1870.

<sup>89</sup> Biogr. Jurid, tit. *Stillington*, pp. 632,

<sup>90</sup> *Id.*, tit. *Alcock*, p. 8.

*England.*"<sup>91</sup> This parliament was prorogued from time to time.<sup>92</sup> *Robert Stillington* may have been ill in 1472, on the last day of November, when the bishop of Rochester prorogued the parliament to Feb. 8, 1472-3.<sup>93</sup> But *Stillington*, as chancellor, prorogued the parliament in 13 Edw. IV (1473), from April 8, to Octo. 6.<sup>94</sup> During this interval was the reluctant marriage of the Lady Anne to her cousin Richard, duke of Gloucester;<sup>95</sup> during the same interval, Bishop *Stillington* retired from the chancellorship.<sup>96</sup>

After that retirement, *Henry Bourchier*,<sup>97</sup> earl of Essex, held the Great Seal from June 23; *acting during the whole of Trinity term*,

<sup>91</sup> "In the presence of the King, sitting in the Chair of Estate, in the Chamber *de Pinet*, within the palace at Westminster, and of the Lords and Commons." Cotton's Abr., p. 688, No. 1. "The fourth day of the Parliament the Commons presented to the King, *William Allington*, Esquire, to be their Speaker." *Id.*, No. 7.

<sup>92</sup> From the last day of November unto Feb. 8 (1472-3). *Id.*, No. 11. From April 8, in 13 Edw. IV, to Octo. 6 (1473). *Id.*, p. 691, Nos. 41, 42. From Octo. 6, continued from day to day to Dec. 13. *Id.*, p. 692, No. 1.

<sup>93</sup> Cotton's Abr., p. 688, No. 11.

<sup>94</sup> *Id.*, p. 691, No. 42.

<sup>95</sup> Miss Strickland's *Queens of England*, vol. 3, p. 247; 3 Turner's *Engl.*, p. 346, *et seq.*

<sup>96</sup> He was still, however, employed by the King, and when the Earl of Richmond (afterwards Henry VII) escaped from England and took refuge in the territories of the Duke of Bretagne, the bishop was sent to that prince to demand that the fugitive should be given up. He failed in his embassy, and we hear no more of him during the remainder of the reign than that he was a trier of petitions in the parliament of the seveneenth year, and that in the eighteenth,

for some unexplained cause, he received a new patent of pardon." (*Ibid.*, xii, 66.) Foss's Biogr. Jurid.

<sup>97</sup> He was son of William, earl of Ewe, in Normandy, son of Sir Robert Bourchier's youngest son William, and was elder brother of the ex-chancellor Thomas Bourchier, archbishop of Canterbury. On his father's death, in 1420, Henry became earl of Essex, being then about twenty-one, and having served under the king in France for three years previously. He succeeded to the barony of Bourchier in 1435, and for his services in the French wars was created Viscount Bourchier in 1446. His marriage with Isabel, daughter of Richard, duke of York, naturally made him an adherent to that party. After the first battle of St. Albans, in May, 1455, he was constituted treasurer of England, and retained the office about eighteen months. When his nephew, Edward IV, had ascended the throne, he was again in the treasurer-ship for one year; in the following June he was advanced to the earldom of Essex. He had the treasurer-ship for a third time in 1472, and held it till his death, April 4, 1483. He was buried in the abbey of Bylegh, near Maldon, in Essex. Foss's Biogr. Jurid.



and bills in chancery being addressed to him by the title of keeper of the Great Seal. Thus he acted until a chancellor was fixed upon.

Laurence Booth<sup>98</sup> was by King Edward selected for his chancellor on July 27, 1473;<sup>99</sup> and as such was present in Parliament some parts of that and of the next year.

"The fourteenth day of December, in the thirteenth year, the bishop of Duresm, Chancellor of England, in the presence of the King, Lords and Commons, after thanksgiving on the King's behalf to every estate, by the King's commandment, prorogued the Parliament unto the twentieth day of January then ensuing, at Westminster."<sup>100</sup>

The "first day of February, in the presence of the King, sitting in the chair of estate, the Lords and Commons, the bishop of Duresm, chancellor, remembered the Commons, that this assembly was for consultation, how the King might proceed in the wars; and for that

<sup>98</sup>Of a 'very antient and knightly family' (Dugdale's Baronage ii, 481), possessing property in Cheshire and Lancashire. From the reign of Edward I there were five generations before John Booth, or Bouth of Barton, who (by two wives) had twelve children. Laurence was the youngest son and the only child of the second wife, Maude, daughter of Sir John Savage of Clifton, or Rock-Savage, in Cheshire. He was a student at Cambridge; became master of Pembroke-Hall in 1450, and afterwards chancellor of the university. Ecclesiastical preferments flowed quickly on him. From the rectory of Cottenham, in Cambridgeshire, he was successively advanced to the provostship of Beverley, in 1453; canonries in York and Lichfield; the archdeaconry of Richmond in 1454; the deanery of St. Paul's in 1456, and the bishopric of Durham by papal bull on Sept. 15, 1457. (Monast. vi, 1307; Le Neve.) Although Fuller describes him as 'neither for York, or Lancaster, but England,' yet until the Lancastrians were deprived of all hope, he was zealously attached to their interest and employed in their service: in 1454

he was Queen Margaret's counsellor and keeper of Henry's privy seal. He was not included in the act of attainder passed in 1461; but thereby his right to forfeitures within the palatinate was excepted in his favour. Within a short period, however, he had incurred King Edward's displeasure. His temporalities were seized into the King's hands on Dec. 28, 1462, and were not restored to him till April 17, 1464. Then he was so far reinstated in the King's favour, that all grants to him were excepted from the act of resumption passed in that year. He in July, 1471, joined in accepting Edward, Prince of Wales, as heir to the crown, and in the next parliament was a trier of petitions. (Rot. Parl. v, 319; vi, 3, 234.) Foss's Biogr. Jurid.

<sup>99</sup>Foss's Biogr. Jurid.

<sup>100</sup>Cotton's Abr., p. 693, No. 16. After which is the following: "The re-assumption of the parliament the twentieth day of January aforesaid, and continuance of the same to the first day of February then ensuing." *Id.*, p. 694, No. 17.

they had heard nothing from his brother of Burgundy, whereon he much depended, he, by the King's commandment, prorogued the Parliament from the said day, unto the ninth of May then ensuing.<sup>101</sup>

In 1474, after February 1, *Laurence Booth*, bishop of Durham, ceased to be chancellor,<sup>102</sup> and was succeeded by *Thomas Rotheram*,<sup>103</sup> alias Scot, who had been translated from the see of Rochester to that of Lincoln. The date of his patent as chancellor must have been between February 1 and May 28, 1474.<sup>104</sup>

10. In 14 *Edw. IV*, the attainder of Sir John Fortescue made void, and his lands restored to him.

In a report of proceedings upon the re-assembly of the Parliament

<sup>101</sup> *Id.*, p. 694, No. 18. After which is this: "The reassumption of the parliament the ninth day of May, and so continued unto the twenty-eighth day of May then ensuing." *Id.*, No. 19.

<sup>102</sup> "We may presume that his removal from it was occasioned by no dislike of the King, inasmuch as within ten days of the death of Archbishop *Nevill*, in June, 1476, the temporalities of the See of York were placed in his custody, and he was translated to that province on the 1st of the following September. He presided as primate less than four years, dying at Southwell on May 19, 1480. His remains were deposited in the collegiate church by the side of his brother, Archbishop William Booth, who had been interred there sixteen years before."

They had a brother John, who was bishop of Exeter; the son of another brother was raised to the peerage as baron Delamere, and afterwards created earl of Warrington; and the daughter of another of the twelve children (of John Booth) married Ralph Nevill, the third earl of Westmoreland. Foss's Biogr. Jurid.

<sup>103</sup> His family was named Scot, and resided at Rotheram, in Yorkshire, where he was born Aug. 24, 1423. His

parents, though not in an elevated rank, were able to send him first to Eton, and then to Cambridge, where, in 1444, he was one of the first scholars at King's College, after its foundation. He then was elected a fellow of Pembroke Hall, of which he afterwards became master in 1480, and he presided over the university for sometime as Chancellor.

Having been selected as one of the chaplains of Edward IV, he quickly acquired the royal favour. In one year (1468) he was advanced to the post of keeper of the Privy Seal, with the profitable appointment of provost of Beverley, and a seat on the Episcopal bench as Bishop of Rochester. In Aug., 1469, he was sent as sole ambassador to treat for peace with the King of France. (Rymer xi, 625.) In 1472 he was translated from Rochester to the diocese of Lincoln. Foss's Biogr. Jurid.

<sup>104</sup> On that day "the bishop of Lincoln, Chancellor of England," made the prorogation mentioned in Cotton's Abr., p. 695, No. 27. Upon the reassumption of parliament, June 6, there was a continuance of the same unto July 18. *Id.*, p. 695, No. 28. The same 18th of July, "Thomas, bishop of Lincoln, Chancellor of England," prorogued the parliament

prorogued to Octo. 6, in 13 Edw. IV, and continued from day to day, to Dec. 13, there is the following:

"John Fortescue, Knight, is restored to blood and lands, and the attainder had against him An. 1 E. IV, made void."<sup>105</sup>

After the words at the close of § 7, p. 833, Mr. Foss says:

"These feelings no doubt operated to produce the retraction spoken of by Selden, of all he had previously written against Edward's title, and this it is apparent on the record, was one of the causes of that monarch's reconciliation with him, and of the reversal of his attainder in October, 1473, 13 Edw. IV, when he was re-appointed a privy councillor."<sup>106</sup>

Fortescue's petition for the reversal of his attainder has lately been reprinted.<sup>107</sup> The causes of the King's assent to the proceeding in parliament are set forth in a document dated at Westminster '*quarto decimo die Februarii anno regni nri quarto decimo.*'<sup>108</sup>

11. *Of the dukes of Clarence and Gloucester; Gloucester's measures by marriage and through the King and Parliament to obtain a part of the large estate of the Earl of Warwick. Proceedings in the parliament which began Octo. 6, in 12 Edw. IV, and ended 14th March, 15 Edw. IV. It statutes. Birth of Gloucester's son. Death of Clarence's wife.*

The King had much disquietude from the rapacity of his brothers, the Dukes of Clarence and Gloucester. Gloucester sought by marrying the earl of Warwick's youngest daughter, Ann, the betrothed of Edward, prince of Wales, to obtain a share of the immense property of that earl.<sup>110</sup> Ann (as stated in § 9, p. 836) reluctantly

unto Feb. 23. *Id.*, p. 696, No. 8. On that day was "the reassumption of the parliament." *Id.*, No. 9.

<sup>105</sup> Cotton's Abr., p. 693, No. 4.

<sup>106</sup> Foss's Biogr. Jurid.

<sup>107</sup> From Rolls of Parliament vi, p. 69; in Lord Clermont's Life of Fortescue, p. xl to xliii, of Cincinnati edi. 1874.

<sup>108</sup> Of which a copy is in Lord Campbell's Lives of Chancellors, vol. 1, p. 373

to 375, of 2d edi. (1846;) p. 349 to 351, of Boston edi. 1874.

<sup>109</sup> 3 Turner's Engl., edi. 1825, p. 346.

<sup>110</sup> "Derived from two sources, the inheritance of his father, the earl of Salisbury, and the possessions of his wife, Anne, the heiress to the noble and opulent family of Beauchamp." 5 Lingard's Engl., ch. 3, p. 218, of Boston edi. 1854.

became Duke Richard's wife. In parliament, in 1473, after May 9, and before May 28, were the following proceedings:

20. "The King, by common consent, granteth that George, duke of Clarence, and Richard, duke of Gloucester, and Anne his wife, daughter and heir to Richard Nevill, late earl of Warwick, and daughters and heirs apparent to Anne, countess of Warwick, shall enjoy to them and to the heirs of their said wives, all the hereditaments belonging to the said Anne in such wise as if the said Anne were dead, and that their said wives should be of blood to the said Anne and enjoy all benefits accordingly; and the said Anne, therefore, forever barred."

21. "That the said Dukes and their wives, and the heirs of their said wives, may make partition of the premises to be good in law; and that the said Dukes, or either of them, over-living his wife, shall during his life, enjoy her property."

22. "That all alienations, discontinuances, charges and incumbrances, suffered by any of the said Dukes, or their wives to debar the other of their said purparties, to be utterly void."

23. "That if the said Duke of Gloucester be at any time after, divorced from the said Anne, after newly her marriage, and suffer any such incumbrances, as above, to be void. And further, if the said Duke Richard, upon such divorce, doth the uttermost to be reconciled during his wife's life, that then after the death of his said wife, he shall enjoy her property."<sup>111</sup>

According to the prorogation, July 18, 1473, by "Thomas, bishop of Lincoln, chancellor of England, "there was a re-assumption of the parliament," Feb. 23, '*anno* 14 E. IV' (1474).<sup>112</sup> After which were the following:

16. "At the petition of Richard, duke of Gloucester, the King spareth the attainting of John Nevil, late Marquis of Montacute, and by authority of Parliament giveth to the said Duke, and to the heirs of his body lawfully begotten, sundry honours, baronies, castles, manors and other hereditaments, which late were Richard Nevil's, late Earl of Warwick."

17. "The like estate, by authority of Parliament, the King giveth to his brother George, Duke of Clarence, of and in the manors of Claveringe, with the appurtenances in Essex, and Manton (or Menson), called the *Harber*, and two houses adjoining thereto in London, which late were the said Earl's of Warwick."

18. "In exchange of the manor and wapentake of Chesterfield, and Scarnesdale in the county of Derby, and of the manor of Bushey, in Hartfordshire, allotted to Richard, Duke of Gloucester, and Anne his wife, cousin and heir of Alice, Countess of Salisbury, viz: one

<sup>111</sup> Cotton's Abr., p. 694, No. 20 to 24.

<sup>112</sup> *Id.*, p. 696, Nos. 8 and 9.

of the daughters and heirs of Richard, late Earl of Warwick, son and heir to the said Alice, and given to the King in fee, the King giveth to the said Duke and Anne, and to the said Anne in fee the manor of Cottingham, with the advowson of the same in the county of York, which late belonged to Richard, late Duke of York, the King's father, and the castle and town of Scardesburgh, with the fee farm of the same and other liberties."

19. "A provision that if any of the premises given by the King be recovered from the said Duke or Anne, or the heirs of the said Anne, that then they, or the heirs of the said Anne, may re-enter upon the premises by them sold."

20. "Where the King by his letters patents in *anno* 14, had given to George, Duke of Clarence, in especial tail the manors of Stamford, Courteney, Torbrian, Stapleton in the county of Devon, Haslebury, Iwarne, Courtney in Dorsetshire, Kingesden, besides Ilehester in Somersetshire, the King revokethe the same gift, and by authority of Parliament giveth the premises to the said Duke in fee, to hold of the King by Knight's service; the which gift was made *anno* 15 E. IV, by Parliament."<sup>118</sup>

44. "The 14th day of March" (*anno* 14 E. IV), "the Bish. of Lincoln, chancellor of England, on the King's behalf, gave thanks to all the estates, and so dissolved the parliament."<sup>114</sup>

In Yorkshire, at Middleham, where Duke Richard and Ann his wife resided in 1474, their only son was born.<sup>115</sup> Clarence's wife died Dec. 12, 1476.<sup>116</sup> It was supposed that her death was caused by poisoning.<sup>117</sup>

Statutes and ordinances of the parliament holden the sixth day of October, in 12 Edw. IV, and continued by prorogations and adjournments to 14th March, 15 Edw. IV, are in nine chapters;<sup>118</sup> whereof the first is in 1 'Statutes Revised,'<sup>119</sup> and the sixth is mentioned below.<sup>120</sup> "The statutes made at Westminster in the fourteenth year," are in four chapters.<sup>121</sup>

<sup>118</sup> Cotton's Abr., p. 697; 5 Lingard's Engl., ch. 3, Boston ed. 1854, p. 219.

<sup>114</sup> Cotton's Abr., p. 700.

<sup>115</sup> Miss Strickland's Queens of Engl., vol. 3, Phila. ed. 1857, p. 247.

<sup>116</sup> *Id.*, p. 247.

<sup>117</sup> For poisoning her there was process and judgment in 16 E. IV at Ware against Anckenett Twyndowe, and therefore "said Anckenett suffered death;" in 17 E. IV the judgment is utterly repealed." Cotton's Abr., p. 703, Nos.

17, 18.

<sup>118</sup> 2 Stat. of the Realm, p. 431 to 444.

<sup>119</sup> Edi. 1870, pp. 350, 351.

<sup>120</sup> Ch. vi recites statutes relating to Sewers, (6 H. VI, c. 5; 8 H. VI, c. 3; 18 H. VI, c. 10; 23 H. VI, c. 8,) and provides that "for fifteen years next ensuing, commissioners of Sewers may be granted after the form of those under 6 Hen. VI, c. 5."

<sup>121</sup> 2 Stat. of the Realm, p. 445 to 451.

12. Of John Morton, Master of the Rolls from 1472 to 1479; and his nephew, Robert Morton, who held the office during the remainder of the reign.

To John Morton, mentioned in § 8, p. 834, as Master of the Rolls, there is a second patent dated May 2, 1475, more than three years after his first appointment.

"On comparing the two, the cause of this renewal seems to be a doubt he entertained whether the grant in the first patent of the *Domus Conversorum*, '*pro habitatione sub*' did not prevent him from residing in any other place, as the only variation in the second patent is in reference to that house, the custody of which was then granted to him, '*per se vel per sufficientem deputatum suum sive sufficientes deputatos suos*.'"<sup>122</sup>

In 12 Harl. Miscel., the person who, on p. 11, is called Dr. Marten is on p. 19, referred to as 'the master of the rolls,' and is mentioned among those in England who were the French King's pensioners, and to whom he 'gave great gifts besides their pensions.'<sup>123</sup> Mr. Foss says:

"Dr. Morton was one of the negotiators of the treaty by which Louis XI stopped the invasion" (of France) "by giving to the English king an annual pension, and distributing large sums among the most powerful in his court, of which Dr. Morton, with such examples before him, deemed it no disgrace to be a participator."<sup>124</sup>

For Robert Morton,<sup>125</sup> his uncle procured, on May 30, 1477, a grant in reversion of the Mastership of the Rolls, on his death or resignation. The latter contingency occurred on, or soon after, John's promotion to the bishopric of Ely. On Jan. 9, 1479, he resigned the Mastership of the Rolls. Then Robert took possession of the office;<sup>126</sup> and he retained it during the remainder of this reign.<sup>127</sup>

<sup>122</sup> Foss's Biogr. Jurid.

<sup>123</sup> The pages referred to are of Lond. ed. 1811 (of Harl. Miscel.)

<sup>124</sup> Foss's Biogr. Jurid.; citing Cal. Rot. Pat. 321; Rymer xii, 45, 48, and Turner iii, 355. The earliest opportunity was taken to advance Morton in the church. Bishop William Grey had not been dead above four days ere Morton was, by the King's request, elected as his successor in the See of Ely on

August 8, 1478. Biogr. Jurid.

<sup>125</sup> Son of Sir Rowland Morton of Thovining, in Gloucestershire, who was a younger brother of John Morton. Foss's Biogr. Jurid.

<sup>126</sup> He also succeeded his uncle in the archdeaconry of Ely. *Id.*

<sup>127</sup> And during the four weeks of which that of Edward V consisted. Foss's Biogr. Jurid.

13. *Instances in England of two chancellors acting at the same time; Alcock and Rotheram. The connection of Chancellor Rotheram and ex-chancellor Bourchier with the peace of 1476 between England and France. Position of Margaret of Anjou (Queen of Henry VI) during the remainder of her life.*

Of *John Alcock* (mentioned in § 8, p. 833,) it is said:

"King Edward entrusted to him the education of his infant son, and placed him on his privy council, and a curious instance of the royal favour occurred in the year 1475, when both *Alcock* and Bishop *Rotheram* held the title of lord chancellor for several months together, affording a solitary instance, in the history of this kingdom, of two chancellors acting at the same time. The fact is incontestably proved by the evidence of numerous Privy Seal bills addressed to both by the same title from April 27 to September 28, 1475. This extraordinary circumstance may be thus explained. When the king planned his invasion of France, he intended to be accompanied by his lord chancellor, Bishop *Rotheram*, and feeling it necessary to provide for the business of the Chancery in England, he nominated Bishop *Alcock* to take the duty during the chancellor's absence. Instead, however, of pursuing the customary practice of making him merely keeper of the Seal, he, as a mark of special favour, invested him with the title of chancellor, intending that the regular chancellor should be with him during the whole period of his absence in France. It happened, however, that the armament was delayed from April till July, so that during those months Privy Seal bills were addressed to both officers in England, frequently on the same day, and from the same place. The last writ of Privy Seal, addressed to Bishop *Alcock*, was dated on September 28,<sup>128</sup> after which Bishop *Rotheram*, having returned from France, resumed his functions as sole chancellor."<sup>129</sup>

In France the chancellor was not the sole person on the part of the King of England; nor was Dr. *Morton* his only associate. The ex-chan-

<sup>128</sup> "The See of Worcester becoming vacant, the King was happy in the opportunity of appointing Alcock to fill it; and possession of the temporalities was granted to him on September 25, 1476. (Rymer xii, 34.) He presided over the diocese for the rest of the reign, during which he enlarged the church of Westbury, and founded a school at King-

ston-on-Hull, where he built a chapel over the remains of his parents at the south of the church, endowing a chantry there also. (Cal. Rot. Parl., 324.) In 1478 he was constituted President of Wales, but on the death of Edward he was removed from the preceptorship of his infant successor by the protector Richard." Foss's Biogr. Jurid. <sup>129</sup> *Id.*

cellor, *Thomas Bourchier*, archbishop of Canterbury, was there also.<sup>130</sup>

*14. Of the ex-chancellor, Bishop Waynflete.*

"That King Edward duly appreciated the merits of Bishop *Waynflete*, and did not treat him with any harshness in consequence of his attachment to the fallen Henry, appears from the bishop's being appointed a trier of petitions in the first parliament of that reign, (Rot. Parl., 461,) and from the just decision made by the king in that parliament against the claims which had been raised by some of the bishop's tenants in Hampshire. These acts were followed by others of an equally generous character, till at last, in the eighth year of the reign, February 1, 1469, a full pardon was granted to him, with an introduction declining his manifest good deserts, and that the king had admitted him into his special favour. Whatever part the bishop took in the following year, when King Henry was for awhile restored, of which we have no clear account, it was overlooked by Edward on regaining the throne, and a new pardon released the bishop from any fears he might have entertained. During the remainder of Edward's reign, though he received frequent tokens of the king's good will towards him, he continued to enjoy the regard of the Lancastrian party, owing both to the mild virtues of his character, and the absence of intemperance on the one side and of servility on the other."<sup>131</sup>

*15. Of the Parliaments in 17 Edw. IV (1477-8), and 22 Edw. IV (1482-3).*

"Thomas, bishop of Lincoln and Chancellor of England, by the King's commandment, declared the cause of the calling" of "the Parliament holden at Westminster the sixteenth day of January,"

<sup>130</sup> 12 Harl. Miscel., p. 11, of ed. 1811. Of circumstances connected with the treaty between England and France there are curious accounts. *Id.*, p. 9 to 20; 5 Collyer's Engl., p. 195 to 198; 2 Hume's Engl., ch. 22, p. 474 to 477, of N. Y. ed. 1850; 5 Lingard's Engl., ch. 3, p. 222 to 225. Mr. Foss says: "The Chancellor is reported to have received from Louis an annual pension of 2,000 crowns, a payment to which no disgrace seems to have been attached!" Biogr. Jurid. How much the King received is stated in 3 Stubbs's Const. Hist., ch. 18, pp. 214, 215.

What was done by the father of Margaret of Anjou for her ransom, and the agreement therefor between Edward IV

and Louis XI (while Edward was in France), are stated in Miss Strickland's Queen's of England, p. 201, of Phila. ed. 1857. Margaret arrived at Dieppe in the beginning of January, 1476. At Rouen, on the 29th, she signed a formal reunciation of all rights her marriage in England had given her. Thence she proceeded to the home to which her father welcomed her—Reculée, about a league from Angers, on the river Mayence. 'Anjou's lone matron, in her father's hall,' lived in seclusion till his death in 1480. *She* died, in 1482, near Saumur, at the chateau of Dampierre, August 25th, in the fifty-first year of her age.' *Id.*, p. 201 to 204.

<sup>131</sup> Foss's Biogr. Jurid.



17 Edw. IV (1477-8).<sup>132</sup> Within a few days the Commons chose and presented their Speaker.<sup>133</sup> The Duke of Clarence was now in the Tower. Observations have been made upon his trial and the manner of his death.<sup>134</sup> Mr. Stubbs says:

"Edward himself acting as the accuser, he was attainted chiefly on the ground of his complicity with the Lancastrians in 1470; the bill was approved by the Commons; and on the 7th of February order was given for his execution."—"How he actually perished is uncertain."<sup>135</sup>

His death was Feb. 17, 1477-8; its mode is often alluded to by historians,<sup>136</sup> but does not appear in the printed statutes of the Parliament.<sup>137</sup>

Chancellor Rotheram who, on Sept. 3, 1480, received the additional dignity of Archbishop of York,<sup>138</sup> made at Westminster, on Jan. 20, in 22 Edw. IV (1482-3),<sup>139</sup> "a declaration of the calling of the Parliament." The choice by the Commons of their Speaker was declared unto the Lords on the second day of the Parliament; and on the third day *John Wood*, Esq., was presented as such to the King.<sup>140</sup> Statutes of this parliament are published.<sup>141</sup>

<sup>132</sup> "In the presence of the King, sitting in the Chair of Estate in the Chamber *de Pinct*, otherwise called St. Edward's chamber, and of the Lords and Commons." Cotton's Abr., p. 701, No. 1.

<sup>133</sup> The second day of the Parliament their choice was declared unto the Lords. The fourth day thereof "the Commons presented to the King William Allington, to be their Speaker." *Id.*, p. 702, Nos. 8, 9.

<sup>134</sup> 5 Collyer's Engl., edi. 1775, pp. 201, 202; 2 Hume's Engl., N. Y. edi. 1850, pp. 480, 481; Reeves's Hist. of Engl. Law, ch. 26, edi. 1869, pp. 111, 112; 1 Campbell's Lives of Chancellors, ch. 23, Boston edi. 1874, pp. 370, 371.

<sup>135</sup> 3 Stubbs's Const. Hist., ch. 18, pp. 215, 216.

<sup>136</sup> 3 Turner's Engl., edi. 1825, p. 349. Colo. Pride, in his last speech (after the restoration of Charles II,) is reported as

saying, "I have an abridgment of an English chronicle which drowns the Duke of Clarence in a *rundlet* of Malmsey; the Duke might as soon be drowned in a thimble." 8 Harl. Miscel., edi. 1810, pp. 384, 385. "A *butt* of Malmsey" is the expression of Collyer, Hume, and some others.

<sup>137</sup> 2 Stat. of the Realm, p. 452 to 467. Ch. 7 is in 1 Statutes Revised, edi. 1870, pp. 352, 353.

<sup>138</sup> Foss's Biogr. Jurid.

<sup>139</sup> "In the presence of the King, sitting in the Chair of Estate in the Chamber *de Pinct*, commonly called St. Edward's chamber," "and of the Lords and Commons." Cotton's Abr., p. 705, No. 1.

<sup>140</sup> *Id.*, Nos. 6 and 7.

<sup>141</sup> In 2 Stat. of the Realm, p. 468 to 476.

16. *Edward's death and character.*

Edward was about forty-one years of age when he died, April 9, 1483;<sup>142</sup> he was buried at Windsor, in the chapel of St. George.<sup>143</sup>

"With great personal courage he may be fairly credited; he was, moreover, eloquent, affable, and fairly well educated."—"He had, or professed to have, some love of justice in the abstract, which led him to enforce the due execution of law, where it did not interfere with the fortunes of his favourites, or his own likes and dislikes: He was, to some extent, a favourer of learned men; he made some small benefactions to houses of religion and devotion, and he did not entirely root up the collegiate foundations of his predecessors of the house of Lancaster. But" (Mr. Stubbs observes) "that is all: he was, as a man, vicious, far beyond anything that England had seen since the days of John, and more cruel and blood-thirsty than any king she had ever known."<sup>144</sup>

He "took personal part in the trials of men who had offended him. The courts of the constable and the marshal sent their victims to death on frivolous charges and with scant regard for the privilege of Englishmen." His "reign furnishes the first authoritative proofs of the use of torture in the attempt to force the accused to confession, or to betray their accomplices."<sup>145</sup>

His "introduction of martial law into civil government was a high strain of prerogative"; and should "have appeared exceptionable to a nation so jealous of their liberties as the English."<sup>146</sup>

<sup>142</sup> Leaving five daughters and two sons; the eldest son, Edward, Prince of Wales, being in his thirteenth year. 5 Collyer's Engl., p. 204; 2 Hume's Engl., ch. 22, p. 483, of N. Y. edi 1850; Walpole's Historic Doubts, p. 15. Dr. Lingard speaks of Edward as in his twelfth, and Richard in his eleventh, year. 5 Lingard's Engl., ch. 3, p. 235. Supposing Edward born Nov. 1st, 1470, he completed his twelfth year Nov. 1, 1482. According to Miss Strickland, "Richard, duke of York, born at Shrewsbury in 1472, was, "at his father's death, eleven years old." Queen's of England, vol. 3, p. 232, of Phila. edi. 1857.

<sup>143</sup> At the east end of St. George's chapel, north aisle, is the monument to Edward IV. On a flat stone, at its foot, are engraven, in old English character, the words, 'King Edward, and his Queen, Elizabeth Widville.' In 1810, in an excavation there, 'two stone coffins containing' her body and that of her third son, prince George, who died in infancy," were discovered fifteen feet below the surface." *Id.*, p. 241.

<sup>144</sup> 3 Stubbs's Const. Hist., ch. 18, p. 219.

<sup>145</sup> *Id.*, pp. 274, 275.

<sup>146</sup> 2 Hume's Engl., ch. 22, N. Y. edi. 1850, p. 450.

Edward may be commended for *rejecting* "a petition that persons who had committed the acts of sacrilege which were attributed to the Lollards, should be regarded as guilty of *high treason*."<sup>147</sup> But this does not contravene the statement that in his reign "no statute was passed for the redress of grievances or maintenance of the subject's liberty."<sup>148</sup> Mr. Stubbs speaks of it as "the first reign in our annals in which not a single enactment is made for increasing the liberty or security of the subject."<sup>149</sup> Mr. Green's language is that it "is the first reign since that of John, in which not a single law which proposed freedom or remedied the abuses of power was *even proposed*."<sup>150</sup>

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## CHAPTER XXVI.

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### INSTITUTIONS IN THE REIGN OF EDWARD V—1483, APRIL 9 TO JUNE 25.

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1. *Proceedings before change in the custody of the Great Seal. Archbishop Rotherham removed from the chancellorship in May.*

On the borders of Wales, about 29 miles from Shrewsbury, and 150 from London, is Ludlow Castle.

"The young Edward was keeping court at Ludlow, surrounded by his mother's kinsfolk and the council which his father had assigned

<sup>147</sup> 3 Stubbs's Const. Hist., ch. 19, p. 363. This may refer to the petition in 8 Edw. IV, "That all such as shall rob any church of any pax, coap, granel, masse-book, or any other trinket of the church," "may be deemed a *traitor*, and *be burned* therefor; that all such persons be deprived of the benefit of their clergy, and that the appeal for the restitution may also lie, and that all jus-

tices may enquire thereof." To which it was answered the King will be advised." Cotton's Abr., p. 684.

<sup>148</sup> Hall. Mid. Ages, ch. 8, part 3, p. 220, of vol. 2, Phila. edi. 1824.

<sup>149</sup> 3 Stubbs, p. 275, and pp. 281, 282.

<sup>150</sup> Green's Short Hist., ch. 6, p. 305, of N. Y. edi. 1876; Hist. of Engl. Peop., book 5, ch. 1, p. 9, of vol. 2, edi. 1879.

him as prince of Wales;<sup>1</sup> the queen was at Westminster in the midst of the jealous council of the king; the duke of Gloucester in Yorkshire. At once the critical question arose, into whose hands the guardianship of the king, and supreme influence in the kingdom, should fall. The queen naturally, but unwisely, claimed it for herself; her brother, the marquis of Dorset, seized the treasure in the Tower; and Sir Edward Wydville attempted to secure the fleet. The council, led by lord Hastings and supported by the influence of the Duke of Buckingham, would have preferred to adopt the system which had been adopted in the early days of Henry VI, and to have governed the kingdom in the king's name, with Gloucester as president or protector."

"The king from Ludlow, the Duke of Gloucester from York, set out for London, the council knowing that Edward was in the hands of the Woodvilles, forbade him to bring up with him more than two thousand men; he was to be crowned on the first Sunday in May. When Gloucester reached Northampton he met the Duke of Buckingham and concerted with him the means of overthrowing the Wydvilles."—"Lord Rivers and Sir Richard Grey, who had been sent to them by the king, accompanied them as far as Stony Stratford, where they were to meet the king; but before they entered the town they were arrested and sent into the north. The news travelled rapidly, and the queen, on the 1st of May, fled into sanctuary. Dorset and Edward Wydville took to flight. On the 4th the king and the dukes entered London; after a long session of the council," "duke Richard was proclaimed protector of the kingdom. On the 13th of May a summons was issued for parliament to meet on June 25; on the 16th (of May) the duke of Buckingham was made chief justice of Wales."<sup>2</sup>

The Lord Chancellor, Archbishop *Rotheram*, who had been attached to Edward IV, and after his death continued as chancellor for a few weeks, could not but notice that the Duke of Gloucester had possession of the person of the infant sovereign.

"To dissipate any fears that might arise from this act, the wily

<sup>1</sup> Stubbs's Const. Hist., ch. 18, p. 221, with this note: "His governor was Lord Rivers, appointed Sept. 27, 1473. Bishop Alcock, of Worcester, was the president of his council; Bishop Martin, of S. David's, his chancellor; Sir Thomas Vaughan, chamberlain; Sir William Stanley, steward; Sir Richard Croft, treasurer; Richard Hunt, controller; Nichols, Grants of Edw. V, p. v, III. Lord Rivers was an accomplished man, and the patron of Caxton;

and the boy's education was carefully attended to. Ordinances were drawn up by Edward IV for his son's household in 1473, which are printed among the Ordinances of the Household, pp. 25-33; and others were issued as late as 1482; Nichols, Grants, &c., vii, viii.

<sup>2</sup> Stubbs's Const. Hist., ch. 18, pp. 221, 222. The same day he had a commission of array for the western counties. The grant was renewed July 15. *Id.*, p. 223, note 1.

duke sent a messenger to the archbishop, assuring him that all would be well. 'I assure him' was the answer of the chancellor, 'be it as well as it will, it will never be so well as we have seen it.' Arming his retainers, he forthwith went to the queen in the sanctuary at Westminster, taking the Great Seal with him. This, after giving her what comfort he could, he placed in her hands to the use and behoof of her son, declaring that if they crowned any other king than him, his brother, who was then with the queen, should the next day be crowned. Although he quickly repented of this unauthorized surrender of the Seal, and contrived to get it back on the same night, his devotion to the royal family was not likely to be overlooked by a man of the duke's character. The error he had committed was taken advantage of to remove him from the chancellorship" in May.<sup>3</sup>

2. *Chancellor Rotheram succeeded in May, 1483, by John Russell, bishop of Lincoln. Whether there was a parliamentary meeting in May.*

*John Russell*<sup>4</sup> was the only learned ecclesiastic among the four ambassadors who were sent in February, 1470 (9 Edw. IV), to invest the Duke of Burgundy with the order of the Garter; he was on that occasion entrusted with the duty of making the complimentary address.<sup>5</sup> He became bishop of Rochester<sup>6</sup> on Sept. 29, 1476, and was soon after entrusted with the government of the king's infant son. He was translated from Rochester to Lincoln on Sept. 29, 1480, and is mentioned as one of the executors of Edward's will.

"It is natural to suppose that he would feel an interest in the well-fare of" Edward's son; "and that he would not advisedly have taken any part in supplanting him. There is nothing to shew that when he was fixed upon to succeed Bishop Rotheram in the chancellorship, the Protector, Richard, duke of Gloucester, contemplated his

<sup>3</sup> Foss's Biogr. Jurid.

<sup>4</sup> Born in the parish of St. Peter's, in the suburbs of Winchester. He received his education at Oxford, being admitted a fellow of New College in 1449, and taking the decree of doctor of the canon law. He held a prebend in the cathedral of St. Paul, and was colated to the archdeaconry of Berks on February 28, 1466. Foss's Biogr. Jurid.

<sup>5</sup> He was in the following February, during the short restoration of Henry VI, one of those appointed to treat with

the French ambassadors, and in Feb., 1472, was sent by King Edward to the Duke of Burgundy to conclude a treaty of peace with him. In the latter commission he is styled secondary in the office of the privy seal; to the keepership of which he probably succeeded after Bishop Rotheram was made lord chancellor. *Id.*

<sup>6</sup> Bishop Russell as '*presidens consilii*,' in 13 E. IV, is mentioned in 4 Inst. 55, and in 3 Stubbs's Const. Hist., p. 245, note 1.

subsequent usurpation.”—“A speech is extant among the Cottonian MSS. (Vitell. E. 10), which, if not delivered, was prepared for delivery, by the bishop to the parliament; in which the young king is spoken of in terms of the highest eulogy.”<sup>7</sup>

3. *Acts before June 13 of the King, Protector and Chancellor; and of Lord Hastings. Richard's intent from and after June 13.*

Grants in the name of Edw. V<sup>8</sup> have the addition ‘by the advice of our uncle, Richard, duke of Gloucester, protector and defender’; and almost all of them, from May 19 to June 5, are dated from the Tower.<sup>9</sup>

“The first document” found with Bishop Russell’s “name as chancellor attached, is dated June 2, 1 Edw. V.”<sup>10</sup>

On June 5, it was announced that Edward’s coronation was fixed for the 22d.<sup>11</sup> After which are two royal grants which omit the addition above mentioned; “and by the omission (it seems to Mr. Turner) “purport to be made by the King’s own instrumentality, without the Protector’s concurrence and authority.”<sup>12</sup>

<sup>7</sup> Foss’s Biogr. Jurid., 3 Stubbs’s Const. Hist., p. 223, note 2. At one time Mr. Turner supposed that “a parliamentary meeting took place in May.” Referring to MSS., Vitell. E. 10, he says: “As the first act of Richard, as protector, is dated the 19th May, and the first grant of Edward from the Tower is on the same day, and as that day in May, 1483, was on a Monday, I would infer that this speech was delivered, and the protectorate appointed on the 19th May.” 3 Turner’s Engl., p. 418, of 2d edi. (1825.) But afterwards, when writing of the parliament, in January, 1483-4, (ch. 27, § 4,) the speech with which the Bishop of Lincoln, as chancellor, opened this parliament (Jan. 1483-4), appeared to Mr. Turner “to be the same which is preserved in the MSS. in the British Museum, Vitell E. 10, p. 71;” and in another copy with some variations in 139. 4 *Id.*, p. 8.

<sup>8</sup> Of May 19, 20, 21, 23, 25, 27, 28, 31,

and of June 2 and 5, all in the Harl. MSS., No. 433, except the 27th, which is in Rymer 12, p. 184. 3 Turner’s Eng., edi. 1825, pp. 438, 439.

<sup>9</sup> *Id.*

<sup>10</sup> (Rymer xii, 185.) Foss’s Biogr. Jurid.

<sup>11</sup> 3 Turner’s Engl., edi. 1825, p. 435. Rymer xii, 185, is cited in 3 Stubbs’s Const. Hist., ch. 18, p. 222.

<sup>12</sup> “These are dated the 9th of June, being a restitution of temporalities to a prior; and another of the 12th of June, appointing a king’s serjeant at law; both” (he observes) “important legal acts, and both dated from Westminster, and not from the Tower.” *Id.*, p. 439. It may be added that between the two was an important act of the so-called Protector, to which Sir Richard Ratcliffe was privy: he had started for “York with Richard’s earnest letter of the 10th, soliciting their aid.” *Id.*, p. 452.

Hastings, "who had exhorted Richard to assume the care of the young king, is stated to have repented of it; and to have convoked a meeting of Edward's most zealous friends at St. Paul's and to have discussed with them what was the most expedient to be done."<sup>13</sup>

If there was such meeting and discussion the same was of no avail. Henceforth the acts of the so-called Protector and his aiders and abettors, were with intent not to preserve, protect and defend the rights and interests of Edward V, but to elevate Richard, without proper consideration for Edward or his brother.

4. *Violent conduct of the Protector on June 13; Lord Hastings executed; Bishop Morton and Archbishop Rotheram imprisoned. Supersedeas to prevent the meeting of Parliament.*

Referring to the confidence of Edward IV in the prudence and attachment of John Morton, bishop of Ely (mentioned in ch. xxv, § 8, 12, pp. 834, 842), and his making Morton one of the executors of his will, Mr. Foss says:

That "he was therefore supposed to feel a devoted interest in Edward's infant family, is rendered probable by the violent conduct of the Protector, Richard, towards him, for which no other reason appears. The young king's council had been summoned on the 13th of June, to deliberate on the coronation; and the protector attending it, had courteously requested the bishop to let him have some strawberries from his garden in Holborn for his dinner, and had then retired. Shortly afterwards he returned, and that furious scene which terminated in the hurried execution of Lord Hastings was performed; Bishop Morton and the Primate of York being immediately arrested and imprisoned in the Tower. The petition, however, of the University of Oxford, procured his (Morton's) release from that fortress, and he was sent to Brecon under the wardship of the Duke of Buckingham."<sup>14</sup>

A writ of supersedeas was issued to prevent the meeting of parliament: none was held during Edward's short reign.<sup>15</sup>

<sup>13</sup> *Id.*, pp. 440, 441.

<sup>14</sup> *Biogr. Jurid*; 3 *Stubbs's Const. Hist.*, ch. 18, p. 223; *Green's Short Hist.*, ch. 6, § 3, p. 311; *Hist. of Eng.*

*Peop.*, book 6, ch. 1, p. 60, of vol. 2, edi. 1879.

<sup>15</sup> 3 *Stubbs's Const. Hist.*, ch. 18, p. 223, note 2.

5. *Acts of the so-called Protector, his aiders and abettors from the 15th to the 21st of June.*

Before, or "on the 16th of June, it had been determined by Richard, and the noblemen who formed his council, that he should be crowned instead of Edward."<sup>16</sup>

On June 16 "Richard went at the head of a large force, with swords and clubs, and compelled the Archbishop of Canterbury, and others, to enter the sanctuary and to solicit the Queen to let the Duke of York go to the Tower for the comfort of the King." The conversation "ended with her parting with the princely boy."<sup>17</sup>

Soon the city was filled with armed followers of Buckingham or Gloucester.<sup>18</sup>

"Sir Richard Ratcliffe, on the 15th of June, had reached York with Richard's earnest letter of the 10th, soliciting their aid. The corporation ordered all the forces that could be assembled to meet at Pomfret on the 18th, where the Earl of Northumberland was waiting to conduct them to London."<sup>19</sup>

At Pomfret<sup>20</sup> (or Pontefract) Earl Rivers, Sir Richard Grey, and others, instead of being protected by the so-called Protector, were unlawfully beheaded.<sup>21</sup>

6. *Acts of the so-called Protector and his aiders and abettors on June 22, 24 and 25. How he ended the reign of Edward V, and made himself king.*

"On the 22d (of June, 1483), Richard's right to the crown was publicly declared by a preacher at St. Paul's cross, and on the 24th the duke of Buckingham propounded the same doctrine at Guild-

<sup>16</sup> 3 Turner's Engl., edi. 1825, p. 453.

<sup>17</sup> *Id.*, pp. 451, 452. Mr. Stubbs says: "Archbishop Bouchier, now nearly eighty, proved once more his faithfulness to the stronger party, by inducing the Queen to allow her younger son to join his brother in the Tower on the 16th."

3 Stubbs's Const., ch. 18, p. 223.

<sup>18</sup> *Id.*, p. 223.

<sup>19</sup> 3 Turner's Engl., p. 452, of 2d edi. (1825.)

<sup>20</sup> Distant 177 miles from London, 14 from Doncaster, and 11 from Leeds.

<sup>21</sup> Twenty thousand of Gloucester's and Buckingham's men were expected in London on June 21. 3 Stubbs's Const. Hist., ch. 18, p. 223, note 3; citing Exc. Hist., p. 17, and Paston Letters iii, 306. But so large a number had not then arrived. The date of Rivers's will is June 23, at Hutton Castle. 3 Turner's Engl., edi. 1845, p. 458; and the army at Pomfret did not leave there till after his execution; that is, not till after the 23d. *Id.*, pp. 454, 455.



hall. On the 25th at Baynard's castle, the protector received a body of lords and others 'many and divers lords spiritual and temporal, and other nobles and notable persons of the commons,' who in the name of the three estates, presented to him a roll of parchment with the contents of which he was no doubt already acquainted."<sup>22</sup>

It was in the form of a petition, "To the High and Mighty Prince, Richard, Duke of Gloucester";<sup>23</sup> and it was favourably received.

"Resistance, if it were thought of, was" at the moment "impossible, for the city was full of armed men, brought up from the north in Gloucester's interest."<sup>24</sup>

The next day, '*Ricardus*' declared himself '*Rex*.'

"On the 26th he appeared in Westminster Hall, sat down in the marble chair, and declared his right as hereditary and elected king."<sup>25</sup>

"Edward V ended his reign on the 25th, and with his brother Richard then disappears from authentic history. How long the boys lived in captivity, and how they died is a matter on which legend and conjecture have been rife."—"Most men believed, and still believe, that they died a violent death by their uncle's order."<sup>26</sup>

<sup>22</sup> 3 Stubbs's Const. Hist., ch. 18, pp. 223, 224; Cotton's Abr., p. 709, *et seq.*

<sup>23</sup> *Id.*, 710.

<sup>24</sup> 3 Stubbs's Const. Hist., ch. 18, p. 224.

<sup>25</sup> *Id.*

<sup>26</sup> 5 Lingard's Engl., note (D,) p. 350

to 357, of Boston edi. 1854; *Id.*, note E, p. 358 to 361; 2 Mackintosh's Engl., pp. 56, 57, of Phila. edi. 1831; Green's Short Hist., ch. 6, § 3, p. 312; Hist. of Engl. Peop., book 5, ch. 1, p. 62, of vol. 2, edi. 1879. The words of the text are in 3 Stubbs's Const. Hist., ch. 18, p. 224, 225.

## CHAPTER XXVII.

INSTITUTIONS IN THE REIGN OF RICHARD III—1483  
TO 1485.

*1. Richard's age. Of Chancellor Russell; ex-chancellors Stillington, Bourchier and Rotheram; the coronation of Richard with his wife July 6.*

Richard, born Octo. 2, 1452, in the castle of Fotheringay (or Fordringhay), was nineteen years when Hen. VI was buried; and thirty years, eight months and twenty-four days old on June 26, 1483.<sup>1</sup>

From the death of Edward IV, Stillington became an adherent of his brother Richard. Stillington being mentioned as drawing up a paper to bastardize Edward's children,<sup>2</sup> Walpole observes of Richard that "it does not look much as if he had publicly accused his mother of adultery when he held his first council at her house."<sup>3</sup>

Whether *John Russell*, bishop of Lincoln, "was satisfied with the representations made in support of Richard's title to the crown, or whether he deemed it expedient at that time to overlook the objections to them, certain it is that he received the Great Seal from King Richard on June 27"<sup>4</sup> (1483).

Richard was crowned with his wife on July 6;<sup>5</sup> the diadem was

<sup>1</sup>4 Dugdale's Engl., p. 797; 3 Turner's Engl., edi. 1825, p. 462.

<sup>2</sup> Foss's Biogr. Jurid.

<sup>3</sup> Walpole's Historic Doubts, edi. 1768, pp. 38, 39. "It appears from Rymer's *Fœdera* that the very first act of Richard's

reign is dated from *quadam alterâ camerâ juxta capellam in hospitio dominæ Cecilie ducisse Eborum*" *Id.*

<sup>4</sup> Foss's Biogr. Jurid.

<sup>5</sup> 3 Turner's Engl., edi. 1825, p. 467.

placed on his head by Archbishop Bouchier.<sup>6</sup> Rotheram was released.<sup>7</sup> Stillington "assisted at the coronation," and gave Richard "every aid and countenance throughout his troublous reign."<sup>8</sup>

2. *Richard's letter to his Chancellor in relation to Jane Shore. In the summer of 1483 other letters by or to him; and a tour of state. What occurred before and after Richard and Buckingham parted at Gloucester. When, where and how Richard arranged for the murder of his nephews in the Tower. How he arranged for his splendid reception at York. His route afterwards.*

It may have been in the summer of 1483 that the following letter was written by the King to his *Chancellor* in relation to the unfortunate Jane Shore,<sup>9</sup> who, though a prisoner in Ludgate, had so captivated the king's solicitor that he desired to marry her :

By the King. . . .

"Right reverend fadre in God, &c. Signifying unto you, that it is shewed unto us, that our servaunt and solicitor, Thomas Lynom, merveillously blinded and abused with the late (wife) of Willm Shore, now being in Ludgate by oure commandment, hath made contract of matrimony with hir (as it is said) and entendith, to our full grete merveile, to procede to th' effect of the same. We for many causes wold be sory that hee soo shulde be disposed. Pray you therefore to send for him, and in that ye goodly may exhorte and stirre hym to the contrarye. And if ye finde him utterly set for to marye hur, and noen otherwise will be advertised, then (if it may stand with the lawe of the churche) We be content (the tyme of marriage deferred to our comyng next to London) that upon sufficient suertie founde of hure good abering, ye doo send for hure keeper, and discharge him of our said commandment by warrant of these, committing hur to the rule and guiding of hure fadre, or any othre by your discretion in the mene season. Geven, &c."

"To the right reverend fadre in God &c., the bishop of Lincoln, our chauncellour."<sup>10</sup>

<sup>6</sup> Who was to crown his successor.  
3 Stubbs's Const. Hist., ch. 18, p. 226.

<sup>7</sup> About this time. *Id.*; Foss's Biogr. Jurid. Mr. Foss adds that it is certain he "was at liberty on Jan. 23, 1484, when King Richard's first parliament met. Biogr. Jurid.

<sup>8</sup> *Id.*

<sup>9</sup> 1 Granger's Biogr. Hist., vol. 1, edi. 1779, p. 68.

<sup>10</sup> From Harl. MS., Brit. Mus.; in Walpole's Historic Doubts, edi. 1768, pp. 118, 119, and 1 Campbell's Lives of the Chancellors, ch. 24, p. 410, of 2d edi. (1846), and p. 382 of Boston edi. 1874.

In the summer of 1483 there were other letters from and to Richard. In July he had written a letter to which there was a reply from Louis the eleventh of France.<sup>11</sup> A letter of July 18, to the Keeper of the Privy Seal<sup>12</sup> may have been written by Richard before "he began his tour of state" through Reading, which he reached on the 23d. At Oxford, Bishop Wainfleet received him and his Queen; at Gloucester, Richard and Buckingham parted from each other in 'most loving and trusty manner'; at Warwick Richard received an address from the envoy of Isabella, queen of Castile, from which it may be inferred that Isabella thought Edward IV should have accepted her hand instead of marrying an English widow.<sup>13</sup>

The secret death of the sons of Edward is supposed to have been in August, 1483. Mr. Turner, after referring to several writers, says:

"According to these authorities, Richard, as he rode to Gloucester, devised the deed; and sent one John Green to Sir Robert Brackenbury, the constable of the Tower, desiring him to make way with them. Brackenbury refused; and Green returned to the King at Warwick with this answer." Then "to Sir James Tyrrell, Richard proposed his purpose. Tyrrell assented, and was dispatched next day with a letter to Brackenbury to deliver to him the keys of the Tower, *for one night*."—"Tyrrell resolved to kill them in their beds; and on the night after his arrival, introduced Miles Forrest, a noted ruffian, and John Dighton, his groom."—"The Princes were sleeping in their beds; the men wrapped them suddenly up and entangled them in the clothes, and throwing the feather bed and pillows upon their mouths, pressed these down till the poor children were smothered and expired."<sup>14</sup>

Mr. Turner states that authentic facts have "come to light corroborating this account." Among such facts are these:

"John Grene, the first messenger to Brackenbury, was one of the yeomen of the King's chamber; and was made receiver of the lordship of the Isle of Wight and of the castle and lordship of Porchester.<sup>15</sup> John Dighton, one of the assassins, had from the King the bailiffship of Aiton in the county of Stafford, with the accustomed wages for his life. Miles Forest, whom More calls a noted ruffian,

<sup>11</sup> Sir H. Ellis's 3d series of Orig. Let., vol. 1, p. 103.

<sup>12</sup> *Id.*, p. 103 to 105.

<sup>13</sup> 3 Turner's Engl., edi. 1825, p. 471 to 474.

<sup>14</sup> 3 Turner's Engl., edi. 1825, pp. 490, 491; 4 *Id.*, pp. 124, 125.

<sup>15</sup> 3 *Id.*, p. 493. There is also a general pardon to John Green in the Harl. MS., p. 28. *Id.*

was made keeper of the wardrobe at Richard's mother's house, Bernard Castle; and dying before the Michaelmas of the year following the murder, an annuity of five marks was settled upon his widow and her son Edward, to be paid out of the rents of that place. Sir James Tyrrell is described in one of the King's grants to him, as the King's trusty knight, for his body, and his counsellor. He was made steward of the duchy of Cornwall, and an assessor of the land there; and steward of many lordships in South Wales and in its marches; supervisor of the castle of Guynes and constable of the castle of Dundagel, and governor of Glamorganshire, and had several other gifts of wards and marriages."<sup>16</sup>

Dr. Thomas Fuller (born in 1608) writes of 'James Tirrell, *Mil.*':

"This is he, so infamous in our English histories, for his activity in murdering the innocent sons of king Edward the fourth, keeping the keys of the Tower, and standing himself at the foot of the stairs, whilst Mr. Forest and J. Dighton stifled them in their beds."<sup>17</sup>

In 1483 Richard left Warwick after Aug. 13; was at Leicester on the 17th, 18th and 19th, and at Nottingham before the 22d. Mr. Turner supposes that "he probably received and triumphed in the news on the 22d."<sup>18</sup>

"At Nottingham the idea seems to have suddenly occurred to him of having a day of splendid state at York, with the unusual ceremony of a second coronation";—"and he prepared for the gratification with much elaborate and forethinking care."—"The citizens received him with the pomp and triumph that he had called for and loved; and plays and pageants were for several days exhibited."<sup>19</sup>

<sup>16</sup> 3 Turner's Engl., edi. 1825, pp. 493, 494. There were also numerous grants to Sir Robert Brackenbury. Mr. Turner says: He "would not commit the murder, but he acquiesced in letting Tyrrell be master of the Tower for the night that was wanted for the perpetration of the crime, knowing the purpose of this intervention. He was, therefore, a complete accessory, and his rewards imply that he was so considered and remunerated. They bribed also his silence, and he never quitted the chief murderer's service." *Id.*, p. 495.

<sup>17</sup> 1 Fuller's Worthies, edi. 1840, pp. 328, 329. "This Tirrell was afterwards executed for treason in the Tower-

yard in the beginning of King Henry the Seventh." *Ibid.* May 6, 1501, is mentioned as his day upon the scaffold. 3 Turner's Engl., edi. 1825, p. 148.

<sup>18</sup> *Id.*, p. 492.

<sup>19</sup> *Id.*, pp. 478, 479. "On the appointed day the clergy led the State procession in capes richly vested; and at the most impressive part of the moving pomp the King appeared with his crown and sceptre, in the fullest majesty which royal apparel could impart. A numerous train of nobility followed, preceding his Queen, bearing also her diadem, and leading in her hand their little son, ten years old, with golden rod and demi-crown." *Id.*, pp. 480, 481.

Edward, his only son, about ten years old, was made Lieutenant of Ireland, Earl of Chester and Prince of Wales, and on Sept. 8 was knighted with great pomp.<sup>20</sup> After a letter (of Sept. 17) to James the third of Scotland,<sup>21</sup> Richard left York for Pomfret.<sup>22</sup> Thence he proceeded gradually through Gainsborough to Lincoln.<sup>23</sup>

3. *In Sept., 1483, Thomas Barowe, Master of the Rolls. In Octo. the Duke of Buckingham in rebellion; and quickly beheaded. Of John Morton, bishop of Ely, and late Master of the Rolls.*

In 1483, *Thomas Barowe*<sup>24</sup> was appointed Master of the Rolls on Sept. 22; he was the first Master of the Rolls, who had a grant of the tun or two pipes of wine.<sup>25</sup>

In October the duke of Buckingham was in open rebellion.

"That the king considered chancellor "*Russell*" a faithful servant, appears from a letter dated at Lincoln on October 12th (1483), addressed to the chancellor, then ill in London, desiring the Great Seal to be sent to him, in which he states his intentions against the Duke of Buckingham, and his determination to 'subdue his malys.' While the Seal remained in the king's hands the duke was taken and beheaded, and it was returned to the chancellor on November 26."<sup>26</sup>

To a letter of the 6th or 16th of November from James, the third of Scotland,<sup>27</sup> there is a reply of Richard, dated the second day of December.<sup>28</sup> In the same month are other letters of his.<sup>29</sup> It has been

<sup>20</sup> *Id.*, pp. 482, 483, 5 Lingard's Engl., p. 354 to 356, of Boston ed. 1874; 3 Stubbs's Const. Hist., ch. 18, p. 226. On that day was executed at York an instrument which illustrates the abuses of wardship. Sir H. Ellis's 3d series of Orig. Let., vol. 1, p. 106 to 109.

<sup>21</sup> *Id.*, p. 109; 3 Turner's Engl., pp. 481, 482; citing Harl. MS., p. 247.

<sup>22</sup> *Id.*, p. 482.

<sup>23</sup> Which he reached on Octo. 12. *Id.*, p. 485. He was at Winchester on Nov. 26, and reached London by Dec. 1. 4 Turner's Engl., ed. 1825, p. 6.

<sup>24</sup> Rector of Olney, in Buckinghamshire, and probably a clerk in the Exchequer. Three weeks after Richard's accession he had the grant of a prebend

in St. Stephen's chapel in Westminster palace. Foss's Biogr. Jurid.

<sup>25</sup> Which was continued afterwards. *Id.* His patent therefor is dated Dec. 6. *Id.*; citing Rot. Pat. 1 Ric. III. Ireland's Inns of Court, p. 203.

<sup>26</sup> (Turner's Engl. iii, 511.) Foss's Biogr. Jurid.; 3 Stubbs's Const. Hist., ch. 18, p. 227.

<sup>27</sup> Sir H. Ellis's 3d series of Orig. Let., p. 109 to 111.

<sup>28</sup> *Id.*, p. 111 to 113.

<sup>29</sup> One of the 6th day of December "to the authorities of the town of Gloucester with permission to wear his livery." *Id.*, p. 113 to 115. An instrument executed at London, Dec. 12, 1483, shews that for service in taking

mentioned,<sup>30</sup> that *John Morton*, bishop of Ely, was sent to Brecon under wardship of the duke of Buckingham.

"On that nobleman's subsequent discontent and retirement to Brecon, the bishop contrived to glide into his confidence, and between them they concocted the plan of raising the earl of Richmond to the throne, and uniting the two factions of York and Lancaster by the marriage of the earl with Elizabeth, the eldest daughter of the late King Edward. He urged his dismissal, under the pretence that by his presence in Ely he could assist the project; but the duke would not part with so wise and politic an adviser. The bishop therefore contrived his own escape, and obtaining a supply of money in Ely, immediately joined the earl of Richmond in Flanders."<sup>31</sup>

4. *Chancellor Russell opened parliament in 1 Ric. III (January 1483-4). Its statutes; especially as to uses or trusts. What is said of Richard's 'politic and wholesome laws.'*

Chancellor *Russell* opened the parliament at Westminster Jan. 23, in 1 Ric. III. The 'statutes and ordinances'<sup>32</sup> embrace—

I. 'An act against privy and unknown feoffment.'<sup>33</sup>

II. An act to free the subjects from benevolences.<sup>34</sup>

V. 'An act touching feoffments made to the King to the use of others.'<sup>35</sup>

A century after Richard's reign it was admitted that '*politic and wholesome laws*' were enacted in his time.<sup>36</sup> The first page of a

the Duke of Buckingham and bringing him into Richard's hands, Richard granted to Nauff Banastre, the Duke's 'manor and Lordship of Ealding,' in Kent county. *Id.*, p. 100 to 102.

<sup>30</sup> In ch. xxvi, § 4, p. 851.

<sup>31</sup> Foss's Biogr. Jurid.

<sup>32</sup> 2 Stat. of the Realm, p. 477 to 498.

<sup>33</sup> *Id.*, p. 477. In the margin are the words: "The inconvenience of secret feoffments to uses." *Id.* "All estates, feoffments, &c., shall be good against the sellers, feoffors, &c., their heirs, and persons having or claiming title to their use." *Id.*, p. 478. "The estate of tenant in tail saved." *Id.*

<sup>34</sup> *Id.*, p. 478.

<sup>35</sup> *Id.*, p. 480. In the margin are the words, "Lands whereof the King is

enfeoffed, jointly with others to uses, shall vest in his co-feoffees."—"Lands whereof he is solely seized to uses shall vest in the *cestui que use*." *Id.*

<sup>36</sup> Lord Bacon says: "As for the *politic and wholesome laws* which were enacted in his time, they were interpreted to be but the brocade of an usurper, thereby to woo and win the hearts of the people, as being conscious to himself that the true obligations of sovereignty in him failed, and were wanting." Bacon's Works, vol. ii, p. 47, of edi. 1864. Richard shewed "keen anxiety to purchase a popularity in which the bloody opening of his reign might be forgotten." Green's Hist. of Engl. Peop., book 5, ch. 1, p. 64 of vol. 2, edi. 1879.

modern treatise on 'uses and trusts' refers to the statute of 1 Ric. III. Mr. Sanders says:

"Upon principles established in the courts of equity, the use itself was alienable by the *cestui que use*; and the statute of 1 Ric. III enabled him to convey the possession without the concurrence of his trustee." <sup>37</sup>

5. *Death of Richard's son in 1484, April. Letter from Richard to his mother, June 3. The Queen's death, March 1485.*

In 1484 Richard was not in the metropolis from March 6 to Aug. 9: he was at Cambridge March 11; and at Nottingham from March 20 to April 25.<sup>38</sup> There the King and Queen received tidings of the death of the Prince of Wales (after rapid illness) at Middleham castle,<sup>39</sup> April 9.

Richard recognized as his heir presumptive his nephew, John de la Pole, earl of Lincoln, son of the Duke of Suffolk and of Richard's sister.<sup>40</sup>

Richard was on May 1 at York; on the 6th at Middleham; on the 15th at Durham; on the 22d at Scarborough; on the 27th at York; from the 30th to June 13 at Pomfret.<sup>41</sup> To Collingbourne, whom Richard had executed as a traitor,<sup>42</sup> he seems to allude in a letter to his mother, dated "at Pountfret, the thirde day of Juyn," and subscribed "Ricardus Rex."<sup>43</sup>

The King was moving about most of the summer and fall of

<sup>37</sup> 1 Sanders on Uses and Trusts, 1.

<sup>38</sup> 4 Turner's Engl., edi. 1825, p. 11, note 27.

<sup>39</sup> (In the North Riding of York.) From this castle, which was a favourite residence of Richard, and the place of birth of the son who died there at the age of twelve years, the views "both up and down Wensley-dale are picturesque and extensive." 6 Dugdale's Engl. and Wales, p. 1210.

<sup>40</sup> 4 Turner's Engl., edi. 1825, p. 27; 3 Stubbs's Const. Hist., ch. 18, p. 231. To succeed the Prince as Lieutenant of

Ireland, the Earl of Lincoln was nominated Aug. 21, 1484. *Id.*, note 5.

<sup>41</sup> 4 Turner's Engl., p. 11, note 27.

<sup>42</sup> 3 Turner's England, edi. 1825, p. 497, note 89; 4 *Id.*, p. 10, note 26, and p. 72, note 43.

<sup>43</sup> "Madam, I beseche you to be good and graciouse lady to my lord, my chamberlayn, to be your officer in Wiltshire in such as Colinbourne had." Harl. MS. in Museum, No. 2236, art. 6; printed in Walpole's Historic Doubts, edi. 1768, p. 39, note; 4 Turner's Engl., p. 81, note 69.



1484.<sup>44</sup> He kept his Christmas at Westminster. During the winter the Queen was ill; her illness terminated in her death about the middle of March.<sup>45</sup>

6. *How Richard acted as to benevolences. Of his course in the summer of 1485 as to the Great Seal and other matters. He died Aug. 22.*

Of Richard's actions one of the wisest had been 'An act to free the subjects from *benevolences*';<sup>46</sup> but he did not adhere to it.

"His expensive state, his lavish liberalities to his friends," and his steps for defence "had so exhausted the royal treasury" that "the King allowed himself to have recourse to the very measure which he had pleased the country by condemning and abrogating. He revived what he had annulled, and *compelled* his wealthy subjects to *give him the sums for which he arbitrarily taxed them*, under the same fictitious name of a benevolence. This" was "a fatal blow at what remained of his popularity."<sup>47</sup>

"Excepting one short excursion to Canterbury, in Nov., 1484, and occasional visits to Windsor in Dec., Jan., Feb., April and May, he was in the metropolis from the beginning of Nov., 1484, to" June, 1485.<sup>48</sup> He went west to Kenilworth castle in the beginning of June; and towards the latter end of the month stationed himself at Nottingham." Thence, on June 22d, he issued letters to the commissioners of array, in every county, to muster his subjects in arms.<sup>49</sup>

It has been said that "he passed his July in a state of royal enjoyment without any prospect or dread of the tempest."<sup>50</sup> But this sup-

<sup>44</sup> Richard was from the 14th to the 25th of June at York; from the 30th to July 11, at Scarborough; on the 20th and 21st again at York; on the 23d at Pomfret; on the 30th at Nottingham; and on Aug. 9 and 10 at Westminster; the rest of the summer and autumn he passed at Nottingham, with a short excursion to Tutbury; on Nov. 12 he returned to Westminster. *Id.*, p. 11, note 27.

<sup>45</sup> 4 Turner's Engl., edi. 1825, p. 20 to 23; 3 Stubbs's Const. Hist., ch. 18, p. 231.

<sup>46</sup> 2 Stat. of the Realm, p. 478; cited in § 4, p. 859.

<sup>47</sup> 4 Turner's Engl., p. 28, and pp. 72, 73. "The Harl. MSS., No. 433, p. 275-8, contains the letters sent by the King, exacting these benevolences, and mentioning the sum which each person, secular or religious, was *required to give*." *Id.* (4 Turner), 29, note 70.

<sup>48</sup> *Id.*, p. 77, note 57.

<sup>49</sup> *Id.*, p. 29, and note 73.

<sup>50</sup> *Id.*, pp. 29, 30, and p. 60; citing Grafton 846.

position seems inconsistent with steps taken by him for safety, one of which was his taking the Great Seal from John Russell, bishop of Lincoln.

"When the Earl of Richmond was hovering about the English court, some suspicion of "Russell's loyalty evidently arose, for the King commanded him on July 24, 1485, to deliver up the Seal to the Master of the Rolls, who was constituted Keeper on August 1, the very day on which the Earl reached Milford Haven."<sup>51</sup>

It seems however to be true that Richard was taken by surprise by Richmond's secrecy and celerity of march;<sup>52</sup> and although Richard "assembled a greater army than England had usually seen about the person of its King, yet it was but a splendid military parade, without either zealous hands or sympathizing hearts."—"The largest portion of its battalions meditated his discomfiture."<sup>53</sup>

To Richard, on the morning of the day of his last battle (Aug. 22), is ascribed a short and energetic speech, in which he expressed "regret for the one criminal action by which he had sullied his name and destroyed his comfort."<sup>54</sup> But "if he experienced remorse for having murdered his nephew, he never repented that he had seized his crown"—"he preferred death to dethronement."<sup>55</sup>

After the battle, usually called the battle of Bosworth Field,<sup>56</sup> a crown was placed on Richmond's head,<sup>57</sup> and the Master of the Rolls (Robert Morton, bishop of Winchester,) gave up the Great Seal to

<sup>51</sup> Foss's Biogr. Jurid.

<sup>52</sup> 4 Turner's Engl., ch. 1, p. 34. Richard's attorney-general (Morgan Kidwelly) had communicated secretly with Richmond. "To this intelligence Henry owed his success, and Richard his downfall." *Id.*, p. 30.

<sup>53</sup> *Id.*, p. 34.

<sup>54</sup> *Id.*, p. 44.

<sup>55</sup> *Id.*, pp. 61, 62.

<sup>56</sup> Mr. Turner observes that the scene of action is called the Field of *Redmore* in the York Register; and that it is so styled by Drayton. He further mentions that Henry VII in his proclamation, three days after the battle, says 'Richard was slain at a place called *Sandeford*, within the shire of Leicester.' *Id.*, p. 50, *note*.

<sup>57</sup> Thomas Stanley, or, as some have said, his brother, Sir William, placed on Richmond's head a crown which Richard had worn on his helmet in the battle (absurdly supposed by some writers to have been the royal diadem, but properly described by Lord Verulam as 'a crown of ornament'), and proclaimed him King, by the title of Henry the Seventh." Lodge's Portr., vol. 1, No. 2. This Thomas Stanley, first Earl of Derby, having died in 1504, the original of Holbein (in the Earl of Derby's collection), from which there is an engraving by E. Finden, may have been by the uncle (of Hans Holbein), mentioned in 1 Walpole's Anecdotes, pp. 103, 104, of ed. 1786.

the conqueror.<sup>58</sup> Richard's body was carried to Leicester, and there interred in the church of the Gray Friars.<sup>59</sup>

Lord Bacon said of Richard:

"Although he were a Prince in Militar. virtue approved, jealous of the honour of the English nation, and likewise a good law-maker for the ease and solace of the common people, yet his cruelties and parricides in the opinion of all men weighed down his virtues and merits, and in the opinion of wise men even those virtues themselves were conceived to be rather feigned and affected things to serve his ambition, than true qualities ingenerate in his judgment or nature."<sup>60</sup>

In an elaborate chapter<sup>61</sup> Mr. Turner refers to this passage and, *not* concurring in the language which he quotes from 'the philosopher of Verulam,' makes this observation:

"So that whatever worth Richard possessed or displayed, he is the only king of England, of whom we are to believe that nothing which seemed good in him could be genuine; but that he must have been altogether and unceasingly that 'malicious, envious and deep dissembling' demon, which More<sup>62</sup> and Polydore Virgil<sup>63</sup> have rather passionately depicted."

A recent dispassionate writer says:

"Of Richard III we know little more than that he was both abler and more unscrupulous than his brother: for both it may be pleaded that we have to read their history through a somewhat distorted medium."<sup>64</sup>

<sup>58</sup> Foss's Biogr. Jurid.

<sup>59</sup> 6 Collyer's Engl., ch. 7, edi. 1775, p. 20; 4 Turner's Engl., ch. 1, edi. 1825, p. 51. 1654, Aug. 9, John Evelyn writes of his being at "the old and ragged city of Leicester, large and pleasantly seated," "famous for the tomb of Richard the Third, which is now converted to a cistern, at which (I think) cattle drink." 2 Evelyn's Memoirs, edi. 1827, p. 85.

<sup>60</sup> Bacon's Works, edi. (by Spedding, &c.,) N. Y., 1864, p. 46.

<sup>61</sup> "Review of the character, laws, causes of unpopularity, kindnesses, tastes, amusements and foreign trade of Richard III." 4 Turner's Engl., ch. 2, edi. 1825, p. 54 to 99.

<sup>62</sup> More, p. 154. <sup>63</sup> Pol. V., 565.

<sup>64</sup> 3 Stubbs's Const. Hist., ch. 18, p. 285.

## CHAPTER XXVIII.

### INSTITUTIONS IN THE REIGN OF HENRY VII—1485 TO 1509.

1. *Henry assumed the style of King Aug. 22, 1485. His course to the Princess Elizabeth and the Duke of Clarence. Coronation of Henry Octo. 30, 1485, by the ex-chancellor, Thomas Bourchier. His death and character.*

Henry, son of Edmund of Hadham, earl of Richmond,<sup>1</sup> and of Margaret of Lancaster,<sup>2</sup> completed the twenty-ninth year of his life<sup>3</sup> but a few weeks before the day (Aug. 22, 1485) on which he succeeded against Richard III in the battle of Bosworth Field,<sup>4</sup> and "assumed the style of King."

"The King," "before his departure from Leicester, dispatched Sir Robert Willoughby to the castle of Sheriff-Hutton,<sup>5</sup> in Yorkshire,

<sup>1</sup> Earl Edmund, though described as brother to Henry the Sixth, was in fact but the son of that Prince's mother, (Catharine, daughter of Charles the sixth, King of France,) by her second husband, Owen Tudor, a private gentleman of Wales. She married him in 1428 and died in 1437. 4 Turner's Engl., ch. 3, edi. 1825, p. 101, note 4; Lodge's Portr., vol. 1, No. 3.

<sup>2</sup> She was the only child of John Beaufort, duke of Somerset, by Margaret, daughter and heir of John, lord Beauchamp of Powyke, and widow of Sir John St. John. Her father was second born son, but at length heir, of John

Beaufort, earl of Somerset, who was eldest son of John of Gaunt, duke of Lancaster, by his third duchess, Catharine Swynford. *Id.*; and 4 Turner's Engl., ch. 3, edi. 1825, pp. 113, 114, note.

<sup>3</sup> Placing Henry's birth in July 1456, he was not quite four years younger than Ric. III. 4 Turner's Engl., ch. 3, edi. 1825, p. 101, note 7.

<sup>4</sup> Three miles from the small town of Bosworth (in Leicester county); distant from the town of Leicester 14, and from London 106 miles,

<sup>5</sup> 10 miles from York and 208 from London.

where were kept in safe custody, by King Richard's commandment, both the lady Elizabeth, daughter of King Edward, and Edward Plantagenet, son and heir to George, duke of Clarence."<sup>6</sup>

The Princess, as she was desired, repaired to London to meet Henry. There he assembled "his council and other principal persons," and in their presence "did renew again his promise to marry" her, "yet was he resolved in himself not to proceed to the consummation thereof till his coronation and a parliament were past." The epidemic disease, which began about Sept. 21, "was no hinderance to the King's coronation," nor "to the holding of the parliament."<sup>7</sup> The ceremony of coronation was upon Octo. 30, at Westminster.<sup>8</sup> Upon the fact that it was performed by the ex-chancellor, *Thomas Bourchier*,<sup>9</sup> archbishop of Canterbury, who had crowned the usurper, *Richard*, Mr. Foss observes:

It "offers a curious exhibition of the facility with which, in those perilous times, minds could accommodate themselves to political changes; but it savours too much of heartlessness and careless indifference, or perhaps too much of consideration of personal safety, not to create a degree of disgust, which, however, is somewhat tempered by the recollection that the archbishop had arrived at a period of life when feelings are not acute, and the desire of peace predominates."<sup>10</sup>

## 2. Of ex-chancellor Stillington; his death and character.

A warrant for the apprehension of *Robert Stillington*, bishop of Bath and Wells, and chancellor from June 20, 1467, to July 27, 1473,<sup>11</sup>

<sup>6</sup> This Edward was delivered from the constable of the castle to the hand of Sir Robert, and by him conveyed to the Tower of London. Bacon's Works, vol. 11, p. 51 of edi. (1864) by Spedding, Ellis and Heath.

<sup>7</sup> Bacon's Works, vol. 11, edi. 1864, p. 52 to 57, 3 Hume's Engl., p. 5 of N. Y. edi. 1850.

<sup>8</sup> 4 Turner's Engl., ch. 3, p. 104.

<sup>9</sup> As to him see ch. 25, § 3, p. 822, and ch. 27, § 1, p. 855.

<sup>10</sup> He died March 30, 1486, at the manor of Knole near Seven-Oaks, and

was buried in the choir of his cathedral. His memory is principally respected because of the supposition that he was an active instrument in introducing the art of printing into England. Foss's Biogr. Jurid. See post, ch. 29, § 6.

<sup>11</sup> When the Earl of Richmond (afterwards Henry VII) escaped from England and took refuge in the territories of the Duke of Bretagne, the bishop was sent to that prince to demand that the fugitive should be given up; but he failed in his embassy. Foss's Biogr. Jurid.

was issued on the day of the battle of Bosworth, Aug. 22, 1485; on the 27th of that month he was in prison at York, 'sore crased by reason of his trouble and carrying.'<sup>12</sup> He succeeded, however, before the end of the year in obtaining his pardon from the King.<sup>13</sup>

3. *In this reign the first chancellor was John Alcock; he was at the coronation, and opened the first parliament. Two ex-chancellors (Rotheram and Russell) present. Of Alcock's superintendence; and the statutes.*

*John Alcock*, bishop of Worcester, who on the death of Edw. IV was removed from the preceptorship of his infant successor,<sup>14</sup> was the earliest chancellor of Henry VII.<sup>15</sup> As such he was at the coronation (on Octo. 30); and at Westminster on Nov. 7 opened Henry's first parliament; two ex-chancellors, Rotheram, archbishop of York, and Russell, bishop of Lincoln, being triers of petitions. There is mention of Alcock's efficient superintendence of the difficult questions before this parliament.<sup>16</sup> Its enactments are in 'Statutes of the Realm.'<sup>17</sup>

4. *In 1485-6 the King married in January to the Princess Elizabeth; John Morton, bishop of Ely, made Lord Chancellor March 6, and in a few months archbishop of Canterbury. How the ex-chancellors, Russell and Alcock were employed.*

"Upon the eighteenth of January" (1485-6), "was solemnized the

<sup>12</sup> Drake 122; cited in Foss's Biogr. Jurid.

<sup>13</sup> Foss's Biogr. Jurid. Subsequently he was implicated in the attempt of *Lambert Simnel* in 1487, and was committed to the castle at Windsor, where he remained a prisoner for nearly four years; he died there in May 1491; his desertion of his patron's children preventing much pity for him. *Id.*

<sup>14</sup> In 1478 Bishop *Alcock* was constituted President of Wales. At the death of Edward IV, his eldest son was there, and was brought thence to London. A clause in the act of attainder passed when *Richard* became king, declares it should not prejudice the bishop in refer-

ence to certain property in Kent. Rot. Parl. vi, 201, 249, is cited in Foss's Biogr. Jurid.

<sup>15</sup> *Id.*

<sup>16</sup> Foss's Biogr. Jurid.; citing Rutland Papers x, 10; Rot. Parl. vi, 267.

<sup>17</sup> Vol. 2, p. 499 to 508. In the margin of ch. I, p. 500, is the following, "Demandants in formedon shall have their action against the perners of profits of lands whereof others are enfeofed to their use. In those actions such perners shall have the same vouchers, &c., as if they were tenants in deed, or as their feoffees would have had if sued. Recoveries in such actions shall have like force as if against the tenants in deed or their feoffees."

so long expected and so much desired marriage between the King and the Lady Elizabeth”<sup>18</sup> then in her twentieth year.<sup>19</sup> In Mr. Lodge’s volumes of “portraits of illustrious personages of Great Britain,” the first is “Elizabeth of York, Queen to Henry the Seventh,” from the original in the collection of the Earl of Essex.

On March 6 (1486), John Alcock was succeeded as Lord Chancellor by *John Morton*,<sup>20</sup> bishop of Ely; a few months afterwards Morton had also the highest office of the church.<sup>21</sup>

Among those employed this year (1486),<sup>22</sup> were two ex-chancellors, John Russell, bishop of Lincoln, and John Alcock, bishop of Worcester; Russell, in June and July, in negotiating with the King of Scots and the Duke of Brittany; and Alcock, in July, in treating with the commissioners of that king.<sup>23</sup>

5. *How ex-chancellor Waynflete was employed till his death in August, 1486. His high character.*

Mr. Foss mentions that “after the usurpation of Richard III, and before the murder of the princes in the Tower, Bishop *Waynflete* was obliged to assist in the reception of the king at Oxford”; but considers “that the bishop, although the college which he founded

<sup>18</sup> “Which day of marriage was celebrated with greater triumph and demonstrations (especially on the people’s part) of joy and gladness than the days either of his entry or coronation; which the King rather noted than liked.” Bacon’s Works, vol. 11, edi. 1864, p. 65; 4 Turner’s Engl., ch. 3, p. 108.

<sup>19</sup> Miss Strickland’s Queens of Engl., (Phil. edi. 1859) vol. 4, p. 17, p. 18 note, and p. 56. Elizabeth was born Feb. 11, 1465–6.

<sup>20</sup> Mentioned in ch. 27, § 3, p. 859. *Henry* had not long assumed the crown ere he summoned Bishop *Morton* to England and admitted him into the council loaded with favours. His attainder was reversed in the first parliament. Foss’s Biogr. Jurid.

<sup>21</sup> In July on the death of Cardinal *Bourchier* the temporalities of the See of Canterbury were placed in his custody in preparation for his own election to the primacy, which immediately followed; the papal bull of translation being dated Octo. 6. His efforts to promote ecclesiastical reforms were supported by the king and approved by the pope. *Id.*

<sup>22</sup> May 19, 1486, is the date of a letter from Margaret, Countess of Oxford, to “John Paston Shrieve of Norfolk and Suffolk.” Engl. Letters (Scoones’s) edi. 1880.

<sup>23</sup> (Rymer xii, 285, 318). After Bishop *Morton*’s advance to the primacy, Alcock was translated to the see of Ely; being admitted to its temporalities Dec. 7. Foss’s Biogr. Jurid.

was benefited by some royal grants, was no friend to the character of the usurper, and that he rejoiced greatly at the triumph of the Lancastrians"; and states that "Henry VII at once shewed his regard to the prelate by confirming all the gifts which had been conferred on his college." Of that college where, after more than three centuries, his memory survives, and his virtues are celebrated, Mr. Foss gives a short account.

Waynflete "had no sooner been invested with the mitre than he commenced his exertions to improve the condition of indigent students. He obtained a royal license on May 6, 1448, to found a hall at Oxford for the study of divinity and philosophy; and he lost no time in procuring adequate premises within the city, including Bostar Hall and Hare Hall, which he united under the name of St. Mary Magdalen Hall, of which the first president received possession on Aug. 29, in the same year. Besides this officer, the foundation was to consist of fifty poor scholars, graduates, with a power to augment or diminish their numbers, and they had the right to use a common seal. The means of the hall were afterwards considerably increased by several royal and private benefactions. With these the bishop was about to enlarge the site of his establishment, when he obtained the king's consent on July 18, 1456, to convert the hall into a college. For this purpose he purchased the hospital of St. John the Baptist, without the eastern gate of the city, where the college is now situated. Its conversion and the erection of the new buildings were long retarded by the public distractions; but when tranquility was restored, he proceeded diligently in his work, receiving numerous donations of valuable endowments which were made from the respect in which he was held and the high admiration which his pious efforts awakened. The edifice is one of the principal ornaments of the university, and is a lasting memorial of the taste as well as of the munificence of the founder, who spared no expense in its erection. He lived to see the whole completed, and to find that the statutes he had prepared for its regulation practically answered the purpose he contemplated."

"With the same desire of encouraging learning and piety in his native town, he erected there a school and chapel of handsome construction, which he also dedicated to St. Mary Magdalen, with a liberal endowment to the master."

In 1486, the bishop having made his will (April 27), died (Aug. 11) and was buried at Winchester in a magnificent mausoleum which he had provided. It seems to Mr. Foss "difficult to speak too highly of his character, as there is scarcely a virtue which has not been attributed to him."<sup>24</sup>

<sup>24</sup> Biogr. Jurid.



Arthur, the first child of the King and Queen, was born Sept. 20, 1486, at Winchester Castle.<sup>25</sup>

6. In November, 1487, meeting of parliament and coronation of the Queen. Statutes, as to 'the court of star chamber,' and other matters. How they affected the chancellor's jurisdiction.

Of the "court of Star Chamber" there is information in volumes mentioned below.<sup>26</sup> Mr. Stubbs says:

"The court of Star Chamber as the judicature of the council in special cases, was organized by the act 3 Hen. VII, c. 1, which appointed the *chancellor*, treasurer, privy seal, a bishop, a lord temporal of the council, and the two chief justices as judges. The privy councillors, however, retained their places: hence the dispute whether this was a new court or an old one."<sup>27</sup>

The parliament of 3 Hen. VII, which met at Westminster Nov. 9 (1487), passed, besides the act just mentioned, other statutes.<sup>28</sup> Those relating to deeds of gift<sup>29</sup> and feoffments<sup>30</sup> may have well suited the chancery, which Lord Bacon says "had the Pretorian power for equity";—"the Pretorian power for mitigating the rigour of law, in case of extremity, by the conscience of a good man." But ch. 14, it is admitted by Lord Bacon, "was somewhat of a strange composi-

<sup>25</sup> Bacon's Works, vol. 11, p. 69, of N. Y. edi. 1864; 6 Collyer's Engl., pp. 34, 35; 5 Lingard's Engl., pp. 283, 284; 4 Turner's Engl., ch. 3, edi. 1825, p. 113. Miss Strickland's Queens of Engl., vol. 4, p. 41, and pp. 72, 73.

<sup>26</sup> 4 Inst., ch. 5, p. 60, *et seq.*; Bacon's Works, vol. 11, p. 130, of N. Y. edi. 1864; 4 Bl. Com. 266, 310, 429, 431, 437; 3 Hume's Engl., p. 69, and note B, p. 453, of N. Y. edi. 1851; 5 Lingard's Engl., pp. 292, 293, of Boston edi. 1854; 2 Mackintosh's Engl., pp. 88, 89, of Phila. edi. 1831; Green's Hist. of Engl. Peop., book 5, ch. 2, pp. 70, 71, of vol. 2, edi. 1879.

<sup>27</sup> 3 Stubbs's Const. Hist., ch. 18, p. 253, note 1.

<sup>28</sup> Of which all are in 2 Stat. of the Realm, p. 502 to 523; and some are in

1 'Statutes Revised,' edi. 1870, p. 354 to 359. Ch. 12, of taking a woman against her will, is construed in 12 Rep. 20. It (and not ch. 14) seems to be meant (to be referred to) in *Baker and Hall's* case. *Id.*, 100.

<sup>29</sup> In the margin of ch. iv [v], pp. 513, 514, of 2 Stat. of the Realm, are the words: "Deeds of gift of goods in trust for the donors declared to be void. Certain bargains, by the name of dry exchange, declared void: penalty £100. *Chancellor* of England shall have jurisdiction to enquire of these bargains in cities and boroughs; and the justices of the peace of adjoining counties."

<sup>30</sup> Ch. xvi, p. 523, is "an act to enable feoffees in trust to sue for the benefit of the feoffors, although they be outlawed."

tion and temper.” After saying “that if any of the King’s servants under the degree of a lord, do conspire the death of any of the King’s council, or lord of the realm, it is made capital,” Lord Bacon makes this statement:

“This law was thought to be procured by the Lord *Chancellor*, who being a stern and haughty man, and finding he had some mortal enemies in court, provided for his own safety; drowning the envy of it in a general law, by communicating the privilege with all other councillors and peers; and yet not daring to extend it further than to the King’s servants on check-roll, lest it should have been too harsh to the gentlemen and other commons of the kingdom, who might have thought their ancient liberty and the clemency of the laws of England invaded, *if the will*, in any case of felony, *should be made the deed*.”<sup>81</sup>

Henry’s “Queen was, with great solemnity, crowned at Westminster, the twenty-fifth of November, in the third year of his reign” (1487).<sup>82</sup>

7. *Of Chancellor Morton in a great council between Nov, 1487, and January, 1488-9. His decision in 4 Hen. VII as to jurisdiction of chancery where one executor releases a debt without the other’s consent.*

Lord Bacon supposes that Hen. VII, “in open parliament, propounded the cause of Britain to both houses by his chancellor, *Morton*, archbishop of Canterbury.” In the Statutes of the Realm there is no mention of a *Parliament* between that mentioned in the last section (Nov. 9, 1487) and that mentioned in the next section (Jan. 14, 1488-9); but during this interval, the case of Brittany may have been propounded to a ‘*Great Council*’; for it appears that in 1488, after keeping Allhallowtide (Nov. 1) at Windsor, the King “removed to Westminster to the *gretest conseill that was many yers withoute*

<sup>81</sup> Bacon’s Works, vol. II, p. 130 to 132, of N. Y. ed. 1864.

<sup>82</sup> “The resolution was taken at Warwick at September. The King and Queen left Warwick on Saturday, October 27, and entered London on the 3d of November.”—“The coronation festivities were ended (27th November)

sooner than they would have been by reason of ‘the great business of the Parliament.’” Bacon’s Works, vol. II (edi. 1864), p. 94, and notes. A detailed account of the coronation is in 4 Lel. Coll. 216-33; cited in 4 Turner’s Engl., ch. 3, edi. 1825, p. 122, note 74.

*the name of parliament.*" Recent editors of Bacon's works take this view; and also think the speech itself "is to be taken, not as a report of what the Chancellor really said, but as a representation of what Bacon imagined that such a person, in such circumstances, with such ends in view, would or should have said."<sup>33</sup>

Sir George Cary reports the following as "by the chancellor against the opinion of Fineux":

"If one executor will release a debt without the consent of his co-partner, whereby the will cannot be performed, the releaser and the releasee shall be ordered therefore in chancery. 4 Hen. VII, 4."<sup>34</sup>

8. *Acts of parliament from Jan. 13, in 4 Hen. VII (1488-9), until Feb. 27, in 5 Hen. VII (1489-90). Of the Chancellor's jurisdiction; and as to the heir of cestui que use.*

The Parliament which began at Westminster on Jan. 13, 4 Hen. VII (1488-9), was on the 23d of February following prorogued to Octo. 14 (5 Hen. VII), 1489. Its acts are numbered ch. i to vii.<sup>35</sup> Chapters viii and ix<sup>36</sup> were passed in the session from Octo. 14 until Dec. 14, when there was a prorogation to Jan. 25. Acts numbered ch. x to xxiv,<sup>37</sup> passed in the session from Jan 25 until Feb. 27

<sup>33</sup> Bacon's Works, vol. II (of ed. by Spedding, &c.), 1864, p. 114-126. *Id.*, Appendix I, p. 367, *et seq.*

<sup>34</sup> Cary's Rep., p. 20.

<sup>35</sup> 2 Stat. of the Realm, p. 524 to 533. Ch. 1, p. 524 to 526, is "For commissions of Sewers. In the margin are the words, "Recital of St. H. VI, respecting commissions of Sewers; 8 H. VI, c. 3, giving further powers; 18 H. VI, c. 10, continuing commissions for 10 years; 23 H. VI, c. 8, continuing commissions for 15 years; 12 E. IV, c. 6, farther continuing commissions for 15 years; commissions of Sewers shall be made for 25 years, according to the form of the statute. 6 H. VI, c. 5; powers of commissioners."

<sup>36</sup> *Id.*, pp. 533, 534.

<sup>37</sup> *Id.*, p. 534 to 541. Among the words in the margin of ch. xii are these on p. 537: "Persons aggrieved may complain to the Justices of the peace, and if not redressed, to the Justices of assize, and then to the King or his Chancellor." This act (ch. xii) is mentioned in Bacon's Works, vol. II (by Spedding, &c.), ed. 1864, p. 146. Ch. xvii, is of wards. On p. 541 in the margin, after mention of the heir of *cestui que use* are the words: "Such heir shall have an action of waste against his guardian committing waste." Ch. xx is in 1 'Statutes Revised,' ed. 1870, p. 360 to 363.

(5 Hen. VII), 1489-90, when the parliament was dissolved.

The last chapter (c. 24) was construed in cases in the reigns of Hen. VIII and Eliz.<sup>38</sup> Of these cases, the last was in chancery; and is particularly noticed in ch 34, § 14.

Margaret Tudor, the eldest daughter of Hen. VII and Queen Elizabeth, was born Nov. 29, 1489.<sup>39</sup>

9. *In 1491, in June, birth of Prince Henry (afterwards Henry VIII); in October, session of Parliament. Its statutes; especially of one giving the chancellor extraordinary jurisdiction over knights of the shire and others.*

At Greenwich Palace, in 1491, on the 28th<sup>40</sup> day of June, was born the second son of the King and Queen, Prince Henry, afterwards Hen. VIII.

Enactments of the Parliament begun at Westminster on Monday, the 17th of October, in 7 Hen. VII (1491), are in 'Statutes of the Realm.'<sup>41</sup>

<sup>38</sup> Hil. 4 H. VIII, Rot. 344; cited in 5 Eliz. *Damport & wife v. Wright*, 2 Dy. 224 a; 27 Eliz., *Menvil's case*, 13 Rep. 21.

<sup>39</sup> Lodge's Portr., vol. 1, No. 12.

<sup>40</sup> This *day* is not mentioned in Bacon's Works, vol. 11, p. 172, edi. (by Spedding, &c.), 1864. But the fact (that he was born "on the twenty-eighth") is stated in 6 Collyer's Engl., edi. 1775, p. 106; Miss Strickland's Queens of Engl., vol. 4, p. 47; and Lodge's Portraits, vol. 1, No. 16.

<sup>41</sup> Vol. 2, p. 549 to 567. As to a grant to the King of fifteenths and tenths, there is in ch. 11, p. 554, 555, a provision: "That if any of the Knights of any of the shires, or any citizen or burgess coming to this present parliament, or any other person having authority to name any collectors, take any

money or other reward for sparing or forbearing to make any person or persons collector or collectors for gathering of the said fifteenths and tenths by this act granted, that then that sufficiently proved before the Chancellor of England for the time being, by examination does or otherwise, that the same *chancellor then shall have authority to commit every of the said Knights of the shire, citizens and burgesses, and every other person having the authority aforesaid so found in that default, to ward, there to remain after the discretion of the said chancellor, and unto the time he have satisfied the party ten times so much of his or their receipts or rewards, and further to do by his discretion unto the time that he or they have made fine to the King for the contempt.*"

10. *Events in 1493 and 1494. Of the Lord Chancellor (now Cardinal) Morton, discoursing upon the conquest of Granada from the Moors; death and character of the ex-chancellor, John Russell, bishop of Lincoln. Act of the Parliament in Ireland in 10 Hen. VII, called 'Poynings' Law.'*

A letter from Hen. VII to Sir Gilbert Talbot, is dated at Kenilworth Castle, July 20, 1493.<sup>42</sup>

John Morton, Lord Chancellor and Archbishop (of Canterbury), "was rewarded with the Cardinal's hat, with the title of St. Athanasius, in 1493."<sup>43</sup> Lord Bacon, after mentioning "letters from Ferdinand and Isabella, King and Queen of Spain, signifying the final conquest of Granada from the Moors," says:

"The King" (Hen. VII) "upon the receipt of these letters sent all his nobles and prelates that were about the court, together with the mayor and aldermen of London in great solemnity to the church of Paul's; there to hear a declaration from the *Lord Chancellor*, now Cardinal."<sup>44</sup>

The ex-chancellor, John Russell, bishop of Lincoln, after the negotiations mentioned in § 4, p. 867, had a quiet life the remainder of his days. He died in the beginning of January, 1494, at his manor of Nettleham; and was buried in his Cathedral. Although doubt upon his character has arisen from his continuing in the chancellorship after Richard had shewn himself in his true colours, yet Russell is described as wise and good, of much experience and one of the most learned men that England had in his time.<sup>45</sup>

"Seeing good and profitable acts of parliament made in the realm of England since the reign of King John extended not into Ireland unless it were specially named or by general words included, as within any of the king's dominions, a right profitable act was made at a parliament holden in Ireland in *anno* 10 H. 7, before Sir *Edward Poynings*, then deputy or *prorex* in Ireland, and thereupon called *Poynings' law*, whereby it is enacted that all statutes late made within the realm of England, concerning or belonging to the common or public weal of the same, from henceforth be deemed good and effectual in the law, and over that be accepted, used and executed within this land of Ireland, in all points, at all times requisite, according to the tenor and effect of the same; and over that, that by the

<sup>42</sup> Engl. Letters (Scoone's), 6di. 1880, pp. 8, 9.

<sup>43</sup> Foss's Biogr. Jurid.

<sup>44</sup> Bacon's Works, vol. 11, edi. (by Spedding, &c.) 1864, p. 191 to 193.

<sup>45</sup> Foss's Biogr. Jurid.

authority aforesaid, that they and every of them be authorized, proved and confirmed, in this same realm of Ireland."<sup>46</sup>

*11. Acts of Parliament in 11 Hen. VII (1495). Oppressions by Empson and Dudley under colour of ch. 3. Provision in ch. 12 for suing in forma pauperis; and in ch. 20 as to alienation by a woman when she has no more than an estate for life. Extraordinary jurisdiction given by ch. 25 to the chancellor and other officers. Also of the Parliament of 12 H. VII (1496-7). The King's policy.*

At Westminster, on the 14th day of October, in 11 Hen. VII (1495), began the Parliament which enacted statutes<sup>47</sup> whereof chapter one is in 1 'Statutes Revised,'<sup>48</sup> and chapter 3, was followed by "horrible oppressions and exactions" by Sir Richard Empson and Edm. Dudley.<sup>49</sup> Ch. 12, "to admit such persons as are poor to sue in *forma pauperis*," is as follows:

"That every poor person or persons which have or hereafter shall have cause of action or actions against any person or persons within the realm, shall have, by the discretion of the chancellor of this realm for the time being, writ or writs original and writs of *subpœna*, according to the nature of their causes, therefor nothing paying to your Highness" (the King) "for the seals of the same, nor to any person for the making of the same writ and writs to be hereafter sued; and that the said chancellor for the time being shall assign such of the clerks which shall do and use the making and writing of the same writs, to write the same ready to be sealed, and also learned counsel and attorneys for the same without any reward taking therefor; and after the said writ or writs be returned, if it be afore the King in his bench, the justices there shall assign to the same poor person or persons counsel learned, by their discretions, which shall give their counsels, nothing taking for the same; and in like wise the same justices shall appoint attorney and attorneys for the same poor person and persons and all other officers requisite and necessary for the speed of the said suits to be had and made, which shall

<sup>46</sup> 4 Inst., 351. Another provision of the Irish act of 10 H. VII is cited in *Id.*, pp. 351, 352, and 12 Rep., pp. 109, 110. How Poyning's act shall be expounded and taken was declared by act of 3 and 4 Ph. and M., ch. 4. 4 Inst., 352; 12 Rep. 110.

<sup>47</sup> In 2 Stat. of the Realm, p. 568, *et seq.*

<sup>48</sup> Edi. 1870, pp. 363, 364.

<sup>49</sup> 2 Inst., 51; Bacon's Works, vol. 11, p. 324 to 327, and pp. 351, 352, of edi. by Spedding, &c. (N. Y., 1864); 3 Hume's Engl., pp. 62, 63, of N. Y. edi. 1851; 4 Turner's Engl., ch. 4, edi. 1825, p. 156; 5 Lingard's Engl., ch. 6, pp. 334, 335, of Boston edi. 1854. The repealing statute (1 Hen. VIII, c. 7,) is mentioned, *post*, in ch. 30.

do their duties without any rewards for their counsels, help and business in the same; and the same law and order shall be observed and kept of all such suits to be made afore the King's justices of his Common place and barons of his Exchequer and all other justices in courts of record where any such suits shall be."<sup>50</sup>

Chapter 20 (of 11 H. VII) has been much considered;<sup>51</sup> especially by Mr. Roper,<sup>52</sup> in respect to modern trusts and equities of redemption;<sup>53</sup> and "the practice of courts of equity in decreeing specific performance of marriage articles."<sup>54</sup> The repeal of this statute of H. VII,<sup>55</sup> and the effect of the repeal are noticed by Mr. Bright.<sup>56</sup>

Ch. 25, pp. 589-90—"An act against perjury, unlawful maintenance and corruption in officers"—conferred a remarkable jurisdiction "for any perjury committed by any inquests between the King and party, party and party." It enacted "that the party grieved or any other that will complain of any unlawful maintenance embracing corruption of any officers whereby the said perjury was induced, and of perjury by the said inquests committed may complain by bill to be presented afore the justice or justices by whom judgment shall be given."<sup>57</sup> Section 4 is as follows:

"That the said justice or justices, after the receipt of the said bill

<sup>50</sup> 1 Stat. of the Realm, p. 578; 1 Statutes Revised, ed. 1870, pp. 364, 365; Bacon's Works, vol. 11, pp. 342, 343, of ed. by Spedding, &c. (N. Y., 1864.)

<sup>51</sup> 24 Eliz., *Foster v. Pitfall*, Cro. Eliz. 2; 26 Eliz., *Stockbridge's case*, *Id.*, 24. Lord Coke says: "If feme tenant in dower had aliened in fee with warranty and died, the warranty had bound the heir until the statute of 11 H. VII." Co. Lit., 365 b; *Id.*, 380 b, 381 a.

<sup>52</sup> 1 Roper on Property, ch. 12, § 2, p. 590, *et seq.* <sup>53</sup> *Id.*, p. 595.

<sup>54</sup> *Id.*, p. 616 to 618; 1704, *Clifton v. Jackson*, 2 Vern., 486-489.

<sup>55</sup> By 3 and 4 W. IV, c. 74, § 17.

<sup>56</sup> 1 Bright's Husband and wife, ch. 20, § 9, p. 515, of N. Y. ed. 1850.

<sup>57</sup> "Which justice or justices shall be bound to receive it, so that the com-

plainant present the same bill before the same justice or justices within six days after the judgment given, and find sufficient surety before the same justice or justices, by his or their discretion to be admitted, that will bind them by recognition or otherwise in such sum or sums of money as shall be limited by the discretion of the same justice or justices to the several parties upon whom he shall complain, upon condition that if the party complainant prove not sufficiently the matter of his complaint to be true, that then the said complainant to pay such costs and damages to the several parties grieved, and at such time as shall be considered and awarded by the discretion of the said persons that have power by this present act to examine the same." 2 Stat. of the Realm, 590.

of complaint in form rehearsed, certify the said bill under his or their seal or seals unto the *Chancellor* of England for the time being, and then the same Chancellor shall cause by writ at the suit and costs of the party complainant, all such person and persons against whom the said complaint is so made, to come afore the same Chancellor and Treasurer of England, the Chief Justices of either bench and the clerk of the rolls for the time being; which shall have full power and authority by this present act, by their discretion, to examine all such person or persons appearing before them, of all things comprised in the bill of complaint, and to punish all and every such person or persons as by that examination shall be found offender or offenders, as well of perjury as other, after their said discretion.”

Section 6 ordains—

“That if perjury be committed by pves in the King’s court of the Chancery, or before the King’s honorable council or elsewhere, that then the forenamed Chancellor, upon a bill to him put with like surety as is afore rehearsed, make like process to call in the supposed perjured persons afore the said Chancellor, Treasurer, Justices and Clerk of the Rolls, and they to have power to hear and examine the said persons, and if the said persons of the jury or other misbehaving before rehearsed, so be convicted, that then they to be punished under like form as is afore rehearsed.”<sup>58</sup>

The Parliament at Westminster on Jan. 16, in 12 Hen. VII (1496–7), having been “called purposely in respect of the Scottish war, there were” (to use Lord Bacon’s words) “no laws made to be *remembered*.”<sup>59</sup> But statutes were enacted which those who please may *see*.<sup>60</sup>

It is observed that after the victory of Stoke<sup>61</sup> (near Newark) the policy of Edward the Fourth was taken up with vigour by his daughter’s husband.

“Parliament was only summoned on rare and critical occasions. It was but twice convened during the last thirteen years of Henry’s

<sup>58</sup> “Provided always that this act begin to take his effect at the feast of the nativity of our Lord next coming; and no longer to endure but unto the next Parliament.” *Id.*, p. 590. By act of Parliament of Jan. 16, in 12 Hen. VII (1496–7), to stand ‘good and effectual’ ‘unto the next Parliament.’ *Id.*, p. 636. Further continued by act of 19 Hen. VII (1503–4), p. 649.

<sup>59</sup> Bacon’s Works, vol. II, edi. (by Spedding, &c.) 1864, p. 263.

<sup>60</sup> In Stat. of the Realm, p. 636 to 647.

<sup>61</sup> “In 1847, on Stokefield, the battle took place between the armies of Henry VII and the Earl of Lincoln, who had espoused the cause of Lambert Simnel, when the Earl, with 4,000 of his followers, was slain.” 7 Dugdale’s Engl. and Wales, tit. Stoke East, p. 1425.



reign. The chief aim of the King was the accumulation of a treasure which should relieve him from the need of appealing for its aid."<sup>62</sup>

*12. Deaths in 1500 of Ex-chancellor Rotheram; of Ex chancellor Alcock; and of Chancellor Morton. Their characters. Tradition of Morton's course to raise the tax called a 'Benevolence.'*

Rotheram, ex-chancellor and archbishop of York, witnessed "the peaceful establishment of the government" of Hen. VII, before his life terminated, at the age of 76, on May 29, 1500."<sup>63</sup>

Bishop Alcock's latter years were much occupied in improving the palace of Ely; and building on his manors. Yet compositions connected with his profession issued from his pen; and he is highly commended for his erudition and piety. He died in his castle at Wisbeach<sup>64</sup> (in Cambridge county), October 1, 1500, respected and beloved by his cotemporaries; and was buried in a magnificent chapel which he had erected in Ely Cathedral. Lord *Coke* speaks of him as "a man of singular piety, devotion, chastity, temperance and holiness of life; who, amongst others of his pious and charitable works, founded Jesus College in Cambridge; a fit and fast friend to "the honorable and virtuous judge," Thomas Littleton, who by his will constituted Alcock "supervisor thereof."<sup>65</sup>

Speaking of a tax, called a Benevolence, which was devised by Edward the Fourth, abolished (for a time) by Richard the Third, and revived by Henry the Seventh, whereby "he raised exceeding great sums," Lord Bacon says:

"There is a tradition of a *dilemma* that Bishop *Morton* (the chancellor) used to raise up the benevolence to higher rates; and some called it his fork, and some his crutch. For he had couched an article in the instructions to the commissioners, who were to levy the benevolence, that if they met with any that were sparing, they

<sup>62</sup> Green's Hist. of Engl. Peop., book 5, ch. 1, vol. 1, edi. 1879, p. 64.

<sup>63</sup> He died at Cawood of the plague, and was buried in a marble tomb which he had erected in York Cathedral. The universities of Cambridge and Oxford, and the See of York, received proofs of his bounty; and in his native town he

founded a college for a provost, five priests and six choristers, with three schoolmasters for grammar, singing and writing. Foss's Biogr. Jurid.

<sup>64</sup> Distant from London 93 miles, from Ely 23, from Peterboro' 21, and Lynn 13.

<sup>65</sup> Preface to Co. Lit., p. xxxi; Foss's Biogr. Jurid.

should tell them that they must needs have, because they laid up; and if they were spenders, they must needs have, because it was seen in their port and manner of living; so neither kind came amiss.”<sup>66</sup>

“But in the matter of exactions, time did after shew that the Bishop in feeding the King’s humour did rather temper it.”—“He won the King with secresy and diligence, but chiefly because he was his old servant in his less fortunes.”—“He was a wise man, and an eloquent, but in his nature harsh and haughty, much accepted by the King, but envied by the nobility and hated of the people.”—“He died of great years, but of strong health and powers.”<sup>67</sup>

At his palace of Knoll, in Kent, his death occurred in 1500, in the fall.<sup>68</sup>

13. *Of Erasmus and his friend, Thomas More, a future Lord Chancellor. When, in 1500, they saw the children of the King and Queen. In 1501, marriage of Prince Arthur to Catharine of Arragon. After his death, in 1502, treaty for her marriage to Prince Henry. In 1503 the Princess Margaret married to the King of Scotland.*

Of Erasmus (Desiderius)<sup>69</sup> it is stated—

That after 1492 “he went to Paris, where he supported himself by teaching, and among other pupils had William Blount, lord Mountjoy; on whose invitation he visited England in 1497, and contracted an intimacy with Colet, Grocyn, Linacer and More. He next went to Orleans, where he finished his ‘Adagia;’ but, in 1499, he returned

<sup>66</sup> Bacon’s Works, vol. II, edi. (by Spedding, &c.), 1864, p. 184; 1 Fuller’s Worthies, edi. 1840, p. 454; Foss’s Biogr. Jurid. Thus were “extorted gifts to the Exchequer from men who lived handsomely, on the ground that their wealth was manifest, and from those who lived plainly, on the plea that economy had made them wealthy.” Green’s Hist. of Engl. Peop., book 5, ch. 2, p. 70, of vol. 2, ed. 1879.

<sup>67</sup> Bacon’s Works, vol. II, edi. (by Spedding, &c.) 1864, pp. 310, 311. “The old chronicle says that he died, ‘passing the years of four score and odd.’ *Id.*, p. 311, note 3.

<sup>68</sup> “In the beginning of October,” as stated in *Id.*, p. 310, note 2 (consistent with which is 1 Fuller’s Worthies, edi. 1840, p. 454); or on Sept. 13, as stated in Foss’s Biogr. Jurid. “His remains were removed for interment in Canterbury Cathedral. To both his dioceses he was a liberal benefactor, restoring their cathedrals and repairing their palaces.”—“The poor were not forgotten by him, either in his life or his testamentary remembrances; and both the universities were partakers of his bounty.” *Id.*

<sup>69</sup> Born at Rotterdam Octo. 28, 1467. Watkins’s Biogr. Dict., edi. 1822.

to this country, to which he ever professed a great attachment. His stay here, however, was short."<sup>70</sup>

Erasmus was more than ten years older than Sir John More's son, Thomas.<sup>71</sup> This future Lord Chancellor received the rudiments of his education at St. Anthony's school in Threadneedle street. His father obtained for him an early introduction into the house of Cardinal Morton—

"Who, like other ecclesiastics of the age, received young persons of name and character into his family, nominally as pages, but really to be instructed under his own eye." More's quickness and ready wit soon made him a favorite with his fellows. In the plays, which it was then the custom, even in bishops' houses, to perform at Christmas, he would intermingle with the actors, and adopting a character appropriate to the piece, would improvise the parts to the sport and admiration of the audience. The worthy cardinal, of whom More always spoke with affectionate gratitude, was not the last to see his merit and to prophesy his future eminence—"he 'placed the promising youth at the University of Oxford."<sup>72</sup>

Of a meeting between More and Erasmus,—without introduction,—at the Lord Mayor's table, the following has been told as illustrating the vein of humour in them both.

"It was contrived by their host that they should not be introduced, but find each other out. They engaged in an argument at dinner. Erasmus felt himself pressed by his opponent's playful sarcasm, and exclaimed, 'You are *More*, for you can be no one else;' and *More* retorted, 'If you are not *Erasmus*, you must be the devil.'"<sup>73</sup>

The narrative may be inaccurate in the statement that "they had been *long* known to each other by epistolary correspondence."<sup>74</sup> For Mr. Foss says of More,

"His *friendship* with Erasmus commenced in 1497, when that

<sup>70</sup> *Id.* "In 1501 he was at Louvain, studying divinity and the Greek language. In 1506 he went to Italy, and while at Padua became tutor to Alexander, natural son of James IV, King of Scotland, for whose use he drew up some treatises on eloquence." *Id.*

<sup>71</sup> The time of his birth is mentioned as 1480 in *Id.*; and Feb. 7, 1478, in Foss's Biogr. Jurid.; the place was "his

father-house in Milk street, London." *Id.*

<sup>72</sup> Foss's Biogr. Jurid.

<sup>73</sup> Penny Magazine for 1838, March 24, p. 110.

<sup>74</sup> And further perhaps in these words: "One of Erasmus's *objects* in one of his journeys to England was to become personally acquainted with his *friend*." *Id.*

eminent man first visited England, who in a letter to a friend in Italy, dated on Dec. 5, 1467, after eulogizing the learning of Colet, Grocyn and Linacre, who were all at Oxford at that period, adds 'Nor did nature ever form any thing more elegant, exquisite and better accomplished than More.'"<sup>75</sup>

"With all the three eminent men mentioned by Erasmus," More "formed an intimacy, and with their encouragement, and Thomas Linacre for his tutor, he enthusiastically pursued his Greek studies"—"began those epigrams and translations that appear in his works; and devoted himself entirely to the allurements of literature."<sup>76</sup>

It was in 1500 that Erasmus wrote:

"*Thomas More* paid me a visit when I was Mountjoy's guest, and took me for recreation a walk to a neighbouring country place where the royal infants were abiding;<sup>77</sup> prince Arthur excepted, who had completed his education. The princely children were assembled in the hall, and were surrounded by their household, to whom Mountjoy's servants added themselves. In the middle of the circle stood prince Henry, then only nine<sup>78</sup> years old; he bore in his countenance a look of high rank and an expression of royalty, yet open and courteous. On his right hand stood the princess Margaret, a child of eleven years, afterwards queen of Scotland. On the other side was the princess Mary, a little one of four years of age, engaged in her sports, whilst Edmund, an infant, was held in his nurse's arms."<sup>79</sup>

Negotiations for a marriage between Arthur, Prince of Wales, and Catharine of Aragon, daughter of Ferdinand and Isabella, were begun in the infancy of these children, and were long continued. At length the Lady Catharine "arrived in England at Plymouth the second of October (1501), and was married to Prince Arthur in Paul's, the fourteenth of November following;"<sup>80</sup> the Prince having then completed fifteen years, and the lady not quite sixteen.<sup>81</sup> Lud-

<sup>75</sup> Biogr. Jurid.; Green's Short Hist., ch. 6, § 4, pp. 317, 318; Hist. of Engl. Peopl., book 5, ch. 2, vol. 2, pp. 81, 82, N. Y. ed. 1879.

<sup>76</sup> Foss's Biogr. Jurid.

<sup>77</sup> Croydon (in Surrey) about 9 miles from London.

<sup>78</sup> As stated in § 9, p. 872. Henry was born June 28, 1491.

<sup>79</sup> Miss Strickland's Queens of England, vol. 4, p. 49, of Phila. ed. 1857. As Edmund was born in 1499, and died

the succeeding year (*Id.*, note), it could not have been later than 1500 when More paid Erasmus this visit.

<sup>80</sup> Bacon's Works, vol. 11, ed. (by Spedding, &c.) 1864, pp. 316, 317.

<sup>81</sup> The birth of Catharine was on Dec. 15, 1485. Miss Strickland's Queens of Engl., vol. 4, p. 64, Phila. ed. 1857. Arthur was born at Winchester Sept. 20, 1486. (Sect. 5, *ante*, p. 869.) Prince Arthur's brother Henry (then Duke of York) led Catharine "from the Bishop's

low Castle (in Shropshire) became the residence of the Prince and Princess. He died there on the 2d of April, 1502; and his mother settled Catharine "at the country palace of Croydon."<sup>82</sup>

"A treaty was signed in June by Henry, and in September by Ferdinand and Isabella, for the marriage of Henry, then Prince of Wales (afterwards Henry VIII), to his brother's widow. This union was sanctioned by a bull of pope Julius II"—"in which, after reciting the previous marriage, he proceeds to pronounce that even if the union with Arthur were perhaps consummated, yet he, by the present dispensation, relieves both parties from all censure which might be otherwise incurred by such an alliance, dispenses with the impediment to their nuptials which the affinity had caused, authorizes them to solemnize their marriage, and to remain conjoined in lawful wedlock; and lastly, as a necessary consequence, decrees that the children who may be the progeny of their union shall be held and deemed to be legitimate."<sup>83</sup>

Margaret Tudor, the king's eldest daughter, "had been solemnly wedded on behalf of King James by his proxy, Patrick Hepburn, earl of Bothwell, in the palace of Richmond, on the 27th of January, 1503. She did not begin her journey to Scotland till the following summer;" there, "on the 8th of August, the marriage was completed."<sup>84</sup>

Upon its being "objected to the Scottish marriage that the kingdoms might by that connexion fall to the king of Scotland, 'Scotland would then,' said Henry VII, 'become an accession to England, not England to Scotland; the greater would draw the less; it is a safer union for England than one with France."<sup>85</sup>

Palace to St. Paul's," and after the ceremony led her back "to the bishop's palace."—"The prince and princess of Wales remained at the bishop's palace that night." *Id.*, pp. 68, 69; Bacon's Works vol. 11, edi. (by Spedding, &c.) 1864, pp. 320, 321.

<sup>82</sup> Miss Strickland's *Queens of England*, vol. 1, p. 73; 5 Lingard's *Engl.*, p. 327 to 329, Boston edi. 1854.

<sup>83</sup> 2 Mackintosh's *Engl.*, Phila. edi. 1831, p. 87. Prince Henry born June 28, 1491, was in Sept., 1502, in his twelfth year.

<sup>84</sup> The mother of Margaret Tudor "expired on her own birthday"—Feb.

11, 1502-3—"the day that she completed her thirty-seventh year." Miss Strickland's *Queen's of Engl.*, vol. 4, p. 56, Phila. edi. 1857. Consequently Margaret's leaving England, and her marriage in Scotland, were after her mother's death. Bacon's Works, vol. 11, edi. (by Spedding, &c.) 1864; pp. 322, 323; Hume's *Engl.*, vol. 3, p. 61, N. Y. edi. 1851; 5 Lingard's *Engl.*, pp. 324, 325. The passage in the text is from 2 Mackintosh's *Engl.*, Phila. edi. 1831, p. 83.

<sup>85</sup> *Id.*, p. 87 (citing Bacon iii, 379). It has been said of the Princess Margaret that she "became the stock from

14. *The mastership of the Rolls in this reign.*

*Thomas Barowe's* possession of the mastership of the rolls seems to have been considered an intrusion. For his predecessor, Robert Morton, resumed his place without a new patent,<sup>86</sup> though afterwards he and *William Elliot*, by patent of Nov. 13, 1485, received a joint appointment to the office of master of the Rolls for their lives, and that of the longest liver.<sup>87</sup> Neither of them appears to have acted in this office after Morton was consecrated bishop of Worcester.<sup>88</sup> On the contrary, the office was held by *David William*<sup>89</sup> from Feb. 22, 1487, and by *John Blyth*<sup>90</sup> from May 5, 1492, until his resignation of it on the 13th of Feb., 1494.<sup>91</sup> He was succeeded by *William Warham*,<sup>92</sup> who held the office for eight years.<sup>93</sup> It was resigned

whom sprung *all the sovereigns who have since reigned* in Great Britain.' *Id.*, pp. 87, 88. Certain it is that her marriage did "bring the House of Stuart at an after time to the English throne." 4 *Turner's Engl.*, ch. 4, edi. 1825, p. 146; *Green's Hist. of Engl. Peop.*, book 5, ch. 2, p. 76, of vol. 2, edi. 1879. Mr. Turner observes that the Brunswick line "is also through her a branch of Henry's descendants." 4 *Turner's Engl.*, ch. 4, edi. 1825, p. 165.

<sup>86</sup> *Foss's Biogr. Jurid.* *Morton* was named as one of the commissioners to perform the office of steward at Henry's coronation, (*Rymer* xii, 277,) and he seems to have been otherwise actively employed in the king's affairs; that is stated to be the reason why his request to have a partner in his office of master of the rolls was complied with. *Id.*

<sup>87</sup> *Id.* In the following year, Octo. 16, *Morton* was advanced to the bishopric of Worcester, and he then resigned the mastership of the Rolls. He died in the first week of May, 1497, and was buried in St. Paul's Cathedral. *Id.*

<sup>88</sup> *Eliot* acted afterwards as a simple master in chancery. *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Son of *William Blyth* of Norton,

in Derbyshire. *John* was sent to the University of Cambridge, became master of King's Hall, and was admitted archdeacon of Richmond (Octo. 8, 1485.)

<sup>91</sup> His resignation was a few days before his consecration as bishop of Salisbury. In the same year he was elected Chancellor of the University, in which he was educated. He died about Aug. 23, 1499; his remains were deposited in a handsome tomb behind the high altar in his cathedral. (*Rymer* xii, 552; *Le Neve*, 326; *Godwin*, 323, 352.) *Id.*

<sup>92</sup> Born about 1456 at Okely, in Hampshire, the residence of his father, *Robert Warham*; educated first at *William of Wykeham's* school at Winchester, and afterwards at New College, Oxford, of which he became fellow in 1475. He took the degree of doctor in both laws, was admitted into holy orders, and received from his college the living of Horewood Magna in the diocese of Lincoln. Entering as an advocate in the Court of Arches, he was selected by Henry VII in July, 1493, to go with Sir *Edward Poynings* on an embassy to the Duke of Burgundy. *Foss's Biogr. Jurid.*

<sup>93</sup> During this period he was frequently engaged in diplomatic services; after other ecclesiastical preferment he was

by him Feb. 1, 1502. Then *William Barons*, or, as he is sometimes called, *William Barnes*,<sup>94</sup> was appointed to the office, and held it till Nov. 13, 1504, when he resigned it.<sup>95</sup> He was succeeded by *Christopher Bainbridge*<sup>96</sup> Nov. 13, 1504, who resigned this office on being preferred to the bishopric of Durham.<sup>97</sup> *John Yonge*<sup>98</sup> received the mastership of the Rolls Jan. 22, 1508 (23 Hen. VII).

*15. Custody of the Great Seal from October 1500, until the end of the reign.*

In 1500, on the 13th of October, *Henry Dene*<sup>99</sup> was invested with

electing to the See of London in Octo. 1501. *Id.*

<sup>94</sup> Took the degree of Doctor of Laws at Oxford; became commissary of the prerogative court of Canterbury, and, having entered into orders, received several ecclesiastical preferments. *Id.*

In June, 1502, he was one of the negotiators in a treaty for marriage between Prince *Henry* and *Catharine of Arragon*; on the 24th of January following, he assisted in laying the first stone of Henry VII's chapel at Westminster abbey. He succeeded Bishop *Warham* as bishop of London Aug. 2, 1504, and obtained restitution of the temporalities Nov. 13.

<sup>95</sup> He died in less than a year afterwards, (Octo. 9 or 10, 1505,) and was buried in St. Paul's. *Id.*

<sup>96</sup> Of a family seated at Hilton, near Appleby, in Westmoreland, where he was born. Educated at Queen's College, Oxford, he took his degree in laws, and having at the same time been admitted into holy orders, he obtained early preferment in the church; for which he may have been indebted to Archbishop *Morton*, his intimate friend, with whom he had suffered under Ric. III. Foss's Biogr. Jurid.

<sup>97</sup> The temporalities of which were granted to him Nov. 17, 1507. He was translated to the archbishopric of York,

receiving the temporalities of that province Dec. 12, 1508. Under Hen. VIII, Archbishop *Bainbridge* became his representative at the Roman court, being empowered by a patent of Sept. 24, 1509. He seems to have pleased both his King and the Pope, receiving from the latter in March, 1511, a cardinal's hat with the title of St. Praxedis. He had an unhappy death at Spoleto, July 14, 1514, and was buried in the cloister of the church of S. Tommaso degli Inglesi, at Rome, under a fine monument, with a full length recumbent figure of his person. He bequeathed 20,000 golden ducats towards the building of St. Peter's. *Id.*

<sup>98</sup> Believed to have been born at Rye; educated first at Wykeham's College at Winchester, and then at New College, Oxford. He graduated as doctor in both laws, and practised as an advocate in the ecclesiastical courts, taking, as was then usual, holy orders also. He had several ecclesiastical preferments, and had some employments under government before he received the mastership of the Rolls. *Id.*

<sup>99</sup> A Welshman; born about 1450; the place of his education is claimed by both Oxford and Cambridge. He became, in 1461, prior of Llanthony Secundus, near Gloucester; was made, in 1494, chancellor of Ireland, and, in

the custody of the Great Seal with the title of Lord Keeper;<sup>100</sup> he resigned the same July 27, 1502.<sup>101</sup> *William Warham*, who had been master of the rolls, was appointed Keeper of the Great Seal Aug. 11, 1502;<sup>102</sup> in January, 1504, the King changed his title of Keeper for the more dignified one of Lord Chancellor, which he retained during the rest of the reign, taking a prominent part in the administration of the kingdom."<sup>103</sup>

16. *Of statutes in 19 Hen. VII (1503-4) enlarging the Chancellor's powers and duties; and providing as to 'feoffments to uses.' Also of a statute for satisfaction of aids to the King.*

Of the statutes of the Parliament begun at Westminster on the twenty-fifth day of January, in 19 Hen. VII (1503-4),<sup>104</sup> chapter vii, '*D. privatis & illicitis statutis non faciend.*' is against certain acts or ordinances unless they "be examined and approved by the *Chancellor*, Treasurer of England and Chief Justices of either bench, or three of them."<sup>105</sup>

In 12 Jac. I, it was resolved, that this statute "doth not corroborate any of the ordinances made by any corporation which are so allowed and approved as the statute speaks, but leaves them to be affirmed as good, or disaffirmed as unlawful by the law."<sup>106</sup>

1496, not only deputy and justiciary of that kingdom, but also bishop of Bangor. In March, 1500, he was translated to the diocese of Salisbury. Foss's Biogr. Jurid.

<sup>100</sup> In January following, he was consecrated Archbishop of Canterbury. Soon afterwards the Pope appointed him his legate in England; before the end of the year he solemnized the nuptials of Prince Arthur with Catharine of Arragon, and was engaged in negotiating the treaty of marriage between the King of Scots and the Princess Margaret. *Id.*

<sup>101</sup> Perhaps there was a failure of health, for he survived his retirement only half a year. He died at Lambeth Feb. 15, 1502-3, and his remains were deposited in Canterbury Cathedral. *Id.*

<sup>102</sup> He became bishop of London Octo. 1, 1502. *Id.*

<sup>103</sup> In vol. I, p. 117, of Sir H. Ellis's 3d series of Orig. Let., is a letter of Hen. VII, dated 'at our castell of Notyng-ham the xx day of August,' naming him for the primacy. Mr. Foss states that he was raised thereto in November, 1503. In 1506 he was elected chancellor of his University. Foss's Biogr. Jurid.

<sup>104</sup> 2 Stat. of the Realm, p. 648 to 694.

<sup>105</sup> It is retained in 1 'Statutes Revised,' edi. 1870, pp. 365, 366.

<sup>106</sup> "The sole benefit which the incorporation obtains by such allowance is, that they shall not incur the penalty of £40, mentioned in the act, if they put in use any ordinances which are against the King's prerogative, or the common



2. That the "restraint of the defendant, for more than the act of 5 Eliz. 4, has made, was against law."<sup>107</sup>

The Chancellor's powers and duties were enlarged by several of these statutes;<sup>108</sup> especially by chapter 14, '*de retentionibus illicitis*,' §§ 6, 7, 8.<sup>109</sup> Ch. 15, § 1, p. 660, as to 'feoffments to uses' has in its margin the words, "The lands of *cestui que use* made liable to executions on judgments, &c., against him." In other respects this chapter is remarked on in Co. Lit. 91<sup>a</sup> and 117<sup>a</sup>.<sup>110</sup> In this Parliament was also made a statute for satisfaction of two aids to the King:

The one for the making knight the right honorable his first begotten son Arthur, late Prince of Wales, deceased; and the other for the marriage of the right noble princess, his first begotten daughter Margaret, now married to the King of Scots."<sup>111</sup>

17. *Character of Hen. VII. When and where he died; place of his interment.*

Henry the Seventh died with the epithet fixed upon him of a second Solomon.<sup>112</sup>

A "direction of his public care was to make the law the universal, impartial, silently-ruling, but irresistible sovereign of all classes of the community. The great and restless disliked, but the people at large always love, the reign and exercise of law. It is the only weapon by which the inferior and the weak can safely and effectually

profit of the people, &c." *Ipswich Tailor's case*, 11 Rep., 54 *b*.

<sup>107</sup> *Id.*, 54 *a*.

<sup>108</sup> Ch. 12, '*de validis mendicantibus repellend.*' enacts that the Chancellor of England, or Keeper of the King's Great Seal, the Treasurer of England, the two Chief Judges, the Chief Baron of the King's Exchequer for the time being, and also the Justices of Assize within their circuit, and every of them, shall have within the shire or shires where they or any of them shall fortune to be, full power and authority to call before them, and every of them, the sheriff, mayors, constables, and all other officers, of or within the same shire or shires, which hath power to put this statute in

execution, and them, and every of them so founden defective, shall have and suffer like pain and punishment as if the said officers or officer had been thereof duly convicted by the due process and course of the King's laws." *Id.*, p. 656.

<sup>109</sup> *Id.*, p. 659.

<sup>110</sup> Ch. 20 is retained in 1 '*Statutes Revised*,' edi. 1870, p. 366. In its margin are the words, '*Recital of Statute 3 Hen. VII, c. 11, giving costs on writs of error;*' "*recited act not yet enforced; the said act confirmed, and shall be put in execution.*"

<sup>111</sup> 13 Rep., 28.

<sup>112</sup> Fabian, p. 537; cited in 4 Turner's Engl., ch. 4, edi. 1825, pp. 150, 151.

combat against power. It is at once the shield and sword of all in their civil transactions; and that it might become so, it was necessary to reduce and to accustom the higher orders to its dominations; and to cause all ranks to feel, in order that all might recognize and obey, its authority and corrective force."<sup>113</sup>

It has been said that "his chief aim appeared to be the accumulation of treasure."

"The less blood he drew the more he took of treasure; and as some construed it, he was the more sparing in the one that he might be the more pressing in the other."<sup>114</sup>

No doubt his accumulations were very great;<sup>115</sup> yet what is called by some his avarice, is viewed by another as 'clemency, mildness and enlightened judgment.' Mr. Turner, who regards his fines as useful in preventing taxations,<sup>116</sup> says,

"His real character seems to have been, sedate thought, well governed mind, calm temper, active spirit, extensive foresight, large views and enlightened judgment. His feelings were subjected to his reason."<sup>117</sup>

After having lived 52 years and about nine months—whereof he reigned 23 years and eight months—Henry the Seventh died on April 22, 1509, in the palace which he had built at Richmond,<sup>118</sup> and was laid by the side of his queen, "in that beautiful chapel at Westminster which bears his name, and which is a noble monument of the architectural genius of his age."<sup>119</sup>

"He dwelleth more richly dead, in the monument of his tomb, than he did alive in Richmond or any of his palaces."<sup>120</sup>

<sup>113</sup> *Id.* (4 Turner), p. 153 to 155.

<sup>114</sup> Bacon's Works, vol. 11, pp. 327, 328, and p. 357, of ed. (by Spedding, &c.) 1864; Green's Short Hist., ch. 6, § 3, pp. 313, 314.

<sup>115</sup> 4 Turner's Engl., ed. 1825, ch. 4, pp. 152, 153, and p. 156; 2 Mackintosh's Engl., Phila. ed. 1831, p. 92 to 95; Green's Hist. of Engl. Peop., book 5, ch. 1, vol. 1, ed. 1879, p. 70.

<sup>116</sup> 4 Turner's Engl., ch. 4, ed. 1825,

p. 154.

<sup>117</sup> *Id.*, p. 164.

<sup>118</sup> Bacon's Works, vol. 11, ed. (by Spedding, &c.) 1864, p. 354; 6 Collyer's Engl., ed. 1775, p. 106; 3 Hume's Engl., p. 67, of N. Y. ed. 1851.

<sup>119</sup> 2 Mackintosh's Engl., Phila. ed. 1831, p. 94; Miss Strickland's Queens of Engl., vol. 4, p. 60, of Phila. ed. 1857.

<sup>120</sup> Bacon's Works, vol. 11, ed. (by Spedding, &c.) 1864, p. 365.

## CHAPTER XXIX.

## REVIEW OF PERIOD FROM 1399 TO 1509.

*1. Revenue of England; expenses of government; and exaction under the name of 'benevolence.' Representation in parliament of shires and boroughs. How acts of parliament were published and proclaimed.*

In a record shewing the application of England's revenue in 1421, there is among the annual payments,

"For the fees (*pro feodis*) of the Treasurer, Keeper of the Privy Seal, the judges of both benches, the barons of the Exchequer and other officers of the King's court, £3,002. 17. 6."<sup>1</sup>

There is "a very particular account of the King's income and expenses" in 11 and 12 Hen. VI. (1433).<sup>2</sup>

Lord Coke mentions how "the exaction under the good name of benevolence," began in 12 Edw. IV; and states "that whereas the King called this a benevolence to please the people, yet many of the people did much grudge at it and called it a malevolence."<sup>3</sup> He refers

<sup>1</sup> *Fœdera*, tome 10, pp. 113, 114; Anderson's *History of Commerce*, p. 248; cited in 3 Hatsell's *Precedents*, 2d ed., (1796), pp. 361, 362.

<sup>2</sup> *Id.*, p. 364. Among the curious items is "an allowance for wages for three lions in the Tower at six pence per day each; and six pence to each of their keepers. The Duke of Orleans, Duke of Bourbon, and Count d'Eu, who had been made prisoners at the battle of Agincourt, in 1415, were at this time

still here. The allowance for the Duke of Orleans was £243 *per annum*; for the Duke of Bourbon £266; and for the Count d'Eu £160 *per annum*."—"The Duke of Orleans continued here till 1440, when he was ransomed for 54,000 nobles, or £18,000 sterling."

*Chronicon Pretiosum* of Fleetwood, p. 52, mentions what £100 (at the beginning of the fifteenth century) would make, or be equivalent to, at a later period. <sup>3</sup> 12 Rep., 119, 120.

to the oration of the Duke of Buckingham at Guildhall, in 1 Edw. V, wherein he inveighed "against this taxation under the name of benevolence"; and cites<sup>4</sup> from 1 Rich. III, ch. 2, a recital,

That "the Commons of this his realm, by new and unlawful inventions and inordinate *covetise* against the law of this realm, have been put to great thraldom and *importable* charges and exactions, and in especial by a new imposition named a benevolence, whereby, divers years, the subjects and commons of this realm, against their wills and freedom, have paid great sums of money."

After which, and other recitals, it is ordained—

"That his subjects and the commonalty of this his realm, from henceforth in no wise be charged by none such charge (exaction) or imposition called benevolence, nor by such like charge; and that such exactions called benevolences afore this time taken be *take* for no example to make such or any like charge of any his said subjects of this realm hereafter but it be damned and annulled forever."<sup>5</sup>

In the same (fifteenth) century there is a list of "boroughs which sent members to Parliament before An. Chr., 1483";<sup>6</sup> a list of "boroughs which never did send members till after *anno* 1483";<sup>7</sup> and a list of shires, shewing as to each shire the number of its members and the proportion paid by it of the tax on the kingdom in a year.<sup>8</sup>

"Of ancient time, when any acts of Parliament were made, to the end the same might be published and understood, and especially before the use of printing came into England (after the Parliament was ended), the acts of Parliament were ingrossed into parchment and bundled up together with a writ in the King's name, under the great seal, to the sheriff of every county, sometimes in Latin and sometimes in French, to command the sheriff to proclaim the said statutes within his bailiwick, as well within liberties as without." "This was the course of Parliamentary proceedings, before printing came in use in England, and it continued after we had the print till the reign of Hen. VII."<sup>9</sup>

<sup>4</sup> *Id.*, 120.

<sup>5</sup> 2 Stat. of the Realm, p. 478. Lord Coke mentions the benevolence desired in 6 H. VII; the act of 11 H. VII, c. 20; and the commission in 20 H. VII, to levy what was granted by 11 H. VII. 12 Rep., 120. There may also be refer-

ence to Reeves's Hist. of Engl. Law, ch. 24, vol. 3, ed. 1869, p. 14.

<sup>6</sup> 2 Somers's Tracts, ed. 1748, p. 445.

<sup>7</sup> *Id.*, pp. 448, 449.

<sup>8</sup> *Id.*, p. 452.

<sup>9</sup> 12 Rep. 58.

2. *Trouble and misgovernance; too much cruelty and persecution; too little tolerance, justice and mercy; evils seen but the remedy not grasped. Of the nation's rights and wrongs; respective duties of the governors and the governed. The nation jealously on the watch against royal interference in elections. Grants of Money connected with redress of grievances.*

"The age in which the Lollard<sup>10</sup> movement was working, was in England, as elsewhere, a period of much trouble and misgovernance; men, parties and classes were jealous and cruel; and although there was an amount of intellectual enlightenment and culture which is in contrast with the preceding century, it had not yet the effect of making men tolerant, merciful or just."—"In the church the gentle and munificent wisdom of men like Chichele<sup>11</sup> and Waynflete<sup>12</sup> had to yield the first place in power to the politic skill and the unscrupulous partisanship of men" "who persecuted the assailants of truths which had little or *no moral influence* upon the persecutor."<sup>13</sup>

"It is curious to mark how, from the very beginning of the century, men saw the evils and failed to grasp the remedy. Not to multiply examples; in 1399 the commons petitioned against illegal usurpations of private property; the Paston letters furnish abundant proof that this evil had not been put down at the accession of Henry VII."<sup>14</sup>

"The discipline of the fourteenth century, culminating in the grand lesson of revolution, had left the nation in no ignorance of its rights and wrongs."—"The nation knew that the king was not an arbitrary despot, but a sovereign bound by oaths, laws, policies and necessities over which they had some controul."<sup>15</sup>

In 1410, bishop *Beaufort* quoted the apochryphal answer of Aristotle to Alexander on the surest defence of states: 'The supreme security and safeguard of every kingdom and city is to have the entire and cordial love of the people and to keep them in their laws and rights.'<sup>16</sup> The same sound principle pervades even the most pedantic effusions of the successive chancellors in the following reigns";—"the king's duty is to rule lawfully, the duty of the peo-

<sup>10</sup> See ch. 20, § 25, p. 699, note 304; and 1 Harl. Miscel., ed. 1808, p. 246.

<sup>11</sup> Archbishop Chichele, who died in 1433, is mentioned in 1 Cunningham's *Lives of Eminent Englishmen*, Glasgow ed. 1838, p. 429 to 431.

<sup>12</sup> Bishop Waynflete, who died in 1486, is mentioned in *Id.*, p. 433 to 435.

<sup>13</sup> Stubbs's *Const. Hist.*, ch. 19, p. 365.

<sup>14</sup> *Id.*, ch. 18, p. 270.

<sup>15</sup> 3 Stubbs's *Const. Hist.*, ch. 18, p. 246.

<sup>16</sup> *Id.*, p. 239. The bishop "touched two kinds of government, namely, *jus regiminis* and *jus subjectionis*, allowing *jus regiminis* to be better, according to the answer of Aristotile to King Alexander, who being demanded in what wise the same Alexander might most fortify the walls of a new propugnade, or frontier town, answered that the most assured walls were the hearty good will of his subjects, and obeisance to laws.' Cotton's *Abr.*, p. 470, No. 3.

ple to obey honestly; the share of the three estates in all deliberations is fully recognized."<sup>17</sup>

The nation knew that the king "could not alter the laws or impose a tax without their consent given through their representatives, chosen in their county courts. They knew how, when and where those courts were held, and that the mass of the nation had the right and privilege of attending them; and *they were jealously on the watch against royal interference in their elections.*"<sup>18</sup>

"The attempt to bind together remedial legislation and grants of money, to make supply depend upon the redress of grievances, was directly and boldly made by the commons in 1401; the commons prayed that before they made any grant, they might be informed of the answers to their petitions. The king's answer given on the last day of the session, amounted to a peremptory refusal."—"It is probable, however, that the point was really secured by the practice, almost immediately adopted, of delaying the grant to the last day of the session, by which time no doubt the really important petitions had received their answer."<sup>19</sup>

3. *When and where Sir John Fortescue is supposed to have been made Chancellor by Henry VI. Of his travels and writings; especially of 'De Laudibus Legum Angliæ.' Mackintosh's notice of Fortescue and Philip de Comines.*

"There was a period of above four months from the battle of St. Albans" (Feb. 17, 1461), "during which Henry" (the sixth) "was still in England and in possession of some, though but a small part of his dominions; for he is charged in the act of his attainder with levying war in his own person against Edward, in Durham, on the 26th of June, 1461, and here Sir John Fortescue was with him. It seems very likely that one of his first acts upon regaining his freedom was to create a chancellor, who, by sealing his writs with the Great Seal, could help to keep up the appearance of kingly power, when but little of its substance remained to him; and the very presence in his retinue of the venerable and famous Lord Chief Justice of England would in itself naturally suggest such appointment. That Henry had a great seal after his expulsion, we know from Queen Margaret's instructions to Ormond in Portugal, where it is expressly mentioned. Thus Fortescue may well have been Henry's Chancellor in England, while there was still some part of the country which acknowledged his rule."<sup>20</sup>

<sup>17</sup> 3 Stubbs, p. 239.

<sup>18</sup> Green's Short Hist., ch. 6, § 3, p. 301. The passage in the text is from 3 Stubbs, p. 246. Interference of Richard II, "in the elections of 1397, was one of the grounds of his deposition." 2 *Id.*, p. 504; 3 *Id.*, p. 257. The regulation

by the enactment of 7 Hen. IV, c. 15, (2 Stat. of the Realm, 156,) is mentioned in 3 Stubbs, p. 257. Other regulations in the same century are mentioned in *Id.*, pp. 258, 259.

<sup>19</sup> *Id.*, pp. 262, 263.

<sup>20</sup> Lord Clermont's Life of Fortescue

"Sir John remained in Scotland with Henry upon his retirement there from Berwick," and employed "his leisure in composing" "wrytings sent out of Scotteland." "He was Chief Councillor to the King in Scotland."<sup>21</sup>

After the defeat at Hexham (May 17, 1464), "Fortescue, who had accompanied the Royal party in this campaign, was now finally parted from his unfortunate master. He remained with the Queen and Prince at Bamborough; and when it was determined that they should proceed to the Continent, he resolved to attend them, and after a short delay, embarked in their company at Bamborough, with some other persons of note."<sup>22</sup>—"They landed at Sluys, in Flanders, then part of the dominions of the Duke of Burgundy, and were hospitably received by the Count of Charolois, his eldest son, who took the Queen to Bruges (providing for the wants of the party with great liberality), and afterwards led them to his father's court at Lisle, where they remained for some time."<sup>23</sup>—"The next journey was to Lorraine, where Margaret's father, René of Anjou, titular King of Jerusalem and Sicily, was Duke."<sup>24</sup>—"He received his daughter and grandson with kindness and gave them and their followers a retreat in Barrois, or Berry." "The place assigned to them was St. Mighel, a small town on the right bank of the Meuse."<sup>25</sup>

"Sir John was the bearer of a special letter of introduction for himself from King Henry the Sixth to his cousin of France, which testifies to the esteem in which he held the person and services of his 'friend and loyal Chancellor.'<sup>26</sup> There is "a dispatch from the authorities at Rouen to their King, announcing the arrival of Pembroke<sup>27</sup> and 'the Chancellor of England.'<sup>28</sup>

Sir John Fortescue and Philip de Comines are referred to by Mackintosh when he observes,

"It was in this period of civil war, that two writers of sagacity describe England as superior to her neighbours, in a mild and equitable government, of which the habitual influence had abated the ravages of a contest, between incensed factions, and deprived intestine commotions of a great part of their horrors."<sup>29</sup>

prefixed to Fort. de Laudibus Legum Angliæ, pp. xx, xxi. Cincinnati edi. 1874.

<sup>21</sup> *Id.*, pp. xxii and xxiii.

<sup>22</sup> Among them was Dr. John Morton. *Id.*, pp. xxiv and xxv.

<sup>23</sup> *Id.*, p. xxv. A letter from Fortescue to the Earl of Ormond, containing directions how to proceed in his mission into Portugal, is dated "at Seynt Mighel, in Barrois, the xiii day of

December." *Id.*, p. xxvi to xxviii.

<sup>24</sup> *Id.*, p. xxix.

<sup>25</sup> Fortescue, after receiving credentials as one of the ambassadors from Henry VI, accompanied to Paris "Jasper Tudor, Earl of Pembroke, Queen Catherine's son by her second husband Owen ap Tudor, and therefore half brother to Henry." *Id.* <sup>26</sup> *Id.*

<sup>27</sup> 2 Mackintosh's Engl., Phila. edi. 1831, p. 63.

In the present volume a reference to Comines liv. v, c. 19, may suffice as to him; something more may be proper as to Fortescue. The list of his works embraces—1. '*Opusculum de Natura Legis Naturæ*,' sometimes called '*De Vigore Legis Naturalis*'; 2. '*De Laudibus Legum Angliæ*'; and 3. '*De Dominio Regali et Politico*.' Of the '*De Natura*,' part, perhaps the whole, was written in Scotland; Fortescue speaks of it to the Prince as 'a small piece I formerly drew up on purpose for your use.' These words are in chapter ix of '*De Laudibus*,' which is the second work.<sup>28</sup> This was probably composed in Lorraine. The third work (on "the difference between absolute and limited monarchy") was written in Fortescue's latter years, when he was residing in Gloucester county at Ebrington.<sup>29</sup> His death was not before Feb. 1476, and was at Ebrington. There he was buried in the parish church; and to his memory was erected a monument.<sup>30</sup> But his best monument is in his own works.<sup>31</sup> It is pleasing to learn that his seat at Ebrington still belongs to the family, and that a complete edition of his works was published in

<sup>28</sup> It was first printed early in the reign of Hen. VIII.

<sup>29</sup> Distant 90 miles from London, 9 from Evesham, 6 from Morton. Of the third work (Fortescue on Monarchy) the first edition was in 1714, with a preface by Sir John Fortescue Aland.

<sup>30</sup> Which, in 1677, Col. Robert Fortescue caused to be repaired. 1 Campbell's Lives of Chancellors, p. 375, of 2d ed. (1846), pp. 351, 352, of Boston ed. 1874. The Colo. then put up a large mural tablet with an inscription. Clermont's Life of Fortescue, pp. xlv and xlv of Cincinnati ed. 1874.

<sup>31</sup> In Allibone's Dict., p. 618, tit. Fortescue, is the following:

"The *De Laudibus Legum Angliæ* was first printed by Whitchurch *sine anno*, but in the early part of the reign of Henry VIII. In 1516, 12mo., a trans. into English, made by Robert Mulcuster, was given to the world. Reprinted 1567, '73, '7, '78, '99, 1609, with *Hengham's Summæ Magna et Parva*,

and notes by Selden on *De Laudibus*, &c., 1616, '60, '72."

"Trans. into English, illustrated with the notes of Mr. Selden, and a great variety of remarks with respect to the Antiq. Hist. and Laws of Eng.; to which are added the *Summæ of Hengham*, by J. Glanvill, 1737, fol.; 2d ed. 1741. New ed., including Selden's notes, and *Hengham's Summæ*, with a large Hist. Pref. by Francis Gregor, 1775, 8vo."

The author of the present work, though he has not met with a copy of '*Hengham Magna*' or '*Hengham Parva*,' has seen at Washington city in the library, at the capitol, Notes on Hengham, in '*Selden's opera*,' vol. 6, (or vol. 3, part 2,) ed. 1726, p. 1911 to 1927. He has also observed Mr. Foss's statement, that '*Hengham Magna*' and '*Hengham Parva*' "*have been published* with notes by Mr. Selden, and are printed at the end of his edition of '*Fortescue de Laudibus Angliæ*' (1741). Biogr. Jurid.



1869 by Lord Clermont, one of his descendants.<sup>32</sup> Others of his kindred are mentioned by Lord Clermont and by Mr. Foss.

4. *Inns of Court and Inns of Chancery, where the laws of England were studied in the 15th century. What appears in Fortescue's 'De Laudibus Legum Angliæ' as to how they were studied; as to the science of government; the serjeants of law and the judges. Respective parts of the Lord Chancellor and the Master of the Rolls when judges were sworn into office. Also of the Guildhall; its courts and portraits of judges.*

Mr. Reeves mentions "the state of the *Hospitia*, or inns, for the residence of professors of law in the time of Henry VI."<sup>33</sup> From another source the following is added:

Serjeant's Inn is situated in Chancery Lane; out of which there is an entrance into Clifford's Inn. In 17 Rich. II, this inheritance of the Bishop of Ely was called *Tenementum Domini John Sharll*, and was let by the Bishop's appointment to one of the six clerks of the chancery. In 12 Hen. IV (1411) it was called Faryndon Inn, and the serjeants at law had lodgings here. Under a grant from the Bishop, or his assigns, the whole house was, in 7 Hen. V, demised to the judges and others learned in the law.<sup>34</sup>

Lion's Inn "was an Inn of Chancery in the time of Henry V;"<sup>35</sup> Staple Inn is said to have been an Inn of Chancery as early as the reign of that king;<sup>36</sup> and Mr. Ireland mentions another Inn of Chancery—Barnard's Inn.<sup>37</sup>

"Clement's Inn doubtless took its name from standing near St. Clement's church or St. Clement's well, and was an Inn of Chancery,

<sup>32</sup> Mr. Foss says, he is "sorry to add for private circulation only." An edition published at Cincinnati (by Robert Clarke & Co.) in 1874, of '*De Laudibus Legum Angliæ*,' contains 'Lord Clermont's carefully corrected revision' with Amos's preface and notes to the edition in 1825; and also Lord Clermont's life of his ancestor.

<sup>33</sup> Reeves's Hist. of Engl. Law, ch. 23, edi. 1869, pp. 659, 660.

<sup>34</sup> Ireland's Inns of Court, edi. 1808, sect. 14, p. 195 to 198.

<sup>35</sup> *Id.*, sect. 6, p. 82.

<sup>36</sup> *Id.*, Sect. 12, p. 188. The inheritance has since been granted to the ancients of Gray's Inn. *Id.*, p. 189.

<sup>37</sup> *Id.*, sect. 13, p. 192.

or house wherein students of the law had residence in King Edward the Fourth's time."<sup>38</sup>

In these inns, and those mentioned in ch. 21, § 4, pp. 721, 722—being near the King's palace at Westminster, and then "between Westminster and the city of London"<sup>39</sup>—the laws of England were studied in Sir John Fortescue's time. He describes the method and form of study, saying—

"There belong to it *ten* lesser inns, and sometimes more, which are called the Inns of Chancery, *in each* of which there are *an hundred* students at the least, and in some of them a far greater number, though not constantly residing. The students are, for the most part, young men; here they study the nature of Original and Judicial writs, which are the very first principles of the law. After they have made some progress here, and are more advanced in years, they are admitted into the Inns of Court, properly so called: of these there are *four* in number. In that which is the least frequented there are about two hundred students." Further he observes, "that neither at Orleans, where both the canon and civil laws are professed and studied, and whither students resort from all parts; neither at Angiers, Caen, nor any other University in France (Paris excepted), are there so many students who have passed their minority as in our Inns of Court where the natives only are admitted."<sup>40</sup>

Such application by so many<sup>41</sup> to this branch of civil knowledge was regarded by Mr. Hume as "a circumstance which proves that a considerable progress was already made in the *science* of government, and which prognosticated a still greater."<sup>42</sup>

That in this science there had been some, and would be greater progress, might be a reasonable conclusion after the discussion of the subject by Fortescue in his treatise '*de laudibus legum Angliæ*.'

<sup>38</sup> "As may seem by the book of records from the record of Mich. 19 E. IV, fol. 61, *titulo misnomer*." Ireland's Inns of Court, sect. 4, p. 70. Ireland (pp. 72, 73,) cites as from Shakspeare, Master Shallow saying, "I was once of Clement's Inn, where I think they will talk of mad *Shallow* yet." The citation is from King Henry IV, part 2, act 3, scene 2.

<sup>39</sup> '*De Laudibus Legum Angliæ*,' ch. 48, edi. 1874, p. 185.

<sup>40</sup> *Ibid.*, ch. 49, p. 137 to 191, and pp. 194, 195.

<sup>41</sup> "In the age of Henry VI, as we are told by Fortescue, there were in the inns of court about *two thousand* students." This language is in 2 Hume's Engl., ch. 23, N. Y. edi. 1850, p. 511.

<sup>42</sup> *Ibid.*

Therein it may be seen that it is "not customary for the kings of England to sit in court or pronounce judgment themselves;"<sup>43</sup> that "a King of England cannot, at his pleasure, make any alterations in the laws of the land;"<sup>44</sup> that "he can neither make any alteration or change in the laws of the realm without the consent of the subjects, nor burthen them against their wills with strange impositions."<sup>45</sup>

Therein also is mentioned the degree of a Serjeant at Law; how it is conferred, and how judges of courts in Westminster are constituted and sworn.<sup>46</sup>

"When any one of them dies, resigns, or is superseded, the King, with the advice of his council, makes choice of one of the serjeants at law, whom he constitutes a judge by his letters patent in the room of the judge so deceased, resigning or superseded; which done, the Lord High *Chancellor of England* shall come into the court where such vacancy is, bringing "in his hand the said letters patent; when sitting on the bench, together with the judges of the court, he introduces the serjeant, who is so appointed to be a judge; to whom, in open court, he shall notify the King's pleasure concerning his succession to the vacant office, and shall cause to be read in public the said Letters Patent: after which the *Master of the Rolls* shall read to him the oath of office; when he is duly sworn into his said office, the *Chancellor* shall give into his hands the King's letters patent, and the Lord Chief Justice of the Court shall assign him the place where he is to sit, and makes him sit down in it."<sup>47</sup>

In the reign of Hen. V. there was a resolution for a more eligible Guildhall; it was carried out in that and the succeeding reign.<sup>48</sup> Ireland mentions courts held in the Guildhall,<sup>49</sup> and portraits on either side the hall (painted by Wright) of eighteen judges,<sup>50</sup> among whom are Sir Heneage Finch, Sir Orlando Bridgman and Sir Matthew Hale.<sup>51</sup>

<sup>43</sup> Cincinnati edi. 1874, ch. 8, p. 22.

<sup>44</sup> *Id.*, ch. 9, p. 26.

<sup>45</sup> *Id.*, p. 27.

<sup>46</sup> *Id.*, ch. 50, p. 196 to 203.

<sup>47</sup> *Id.*, p. 203. On comparing this page with ch. 4, pp. 117, 118, of *Legal Judic.* in Ch. (edi. 1727), there may be observed some difference in the phraseology.

<sup>48</sup> Ireland's *Inns of Court*, Sect. 16,

pp. 211, 212. In 1 Hen. VI was a gift by the executors of Richard Whittington for paving the great hall and glazing several windows. *Id.*, p. 213.

<sup>49</sup> *Id.*, p. 223.

<sup>50</sup> Who, after the fire of London, settled the claims as between the landlord and tenant. *Id.*, p. 215.

<sup>51</sup> *Id.*, p. 216.

5. *A court in its determination, even though as to its privileges or customs, must not transcend its jurisdiction. In the administration of justice there were evils which conduced to the fall of the House of Lancaster; and which were not remedied by the House of York. Evil reputation of the York kings must be shared by a demoralized age. In 1 H. VII remonstrance against the King's consulting judges beforehand. Of the King's jurisdiction as to pardons; limitations thereof.*

"In 12 E. IV, 2, in Sir John Paston's case, it is holden that every court shall determine and decide the privileges and customs of the same court, &c."

This broad language of Lord Coke<sup>52</sup> must be subject to the qualification that the court's determination or decision will be void so far as it exceeds its *jurisdiction*.<sup>53</sup>

It has been observed that "in times of civil war, or during periods of peace that are possible in a reign of terror, *judicial iniquities* are quite compatible with maintenance of the *forms* of law."<sup>54</sup> Though there has been high praise of the administration of justice during the troublous years of Henry VI;<sup>55</sup>—though there were great judges, and the law was ably discussed—yet Mr. Stubbs considers "the administration of the law was full of abuses"; "justice was not enforced; there was no governance" or a want of proper governance. He says,

"It was the lack of the strong hand in reform, in justice, and in police, the want of governance at home, that definitely proved the incapacity of the house of Lancaster, and that made their removal possible. It was the fatal cause of their weakness, the moral justification of their fall."<sup>56</sup>

The house of York, "although they ruled with a stronger will, failed altogether to remedy the evils to which they succeeded."—"England found no sounder governance under Edward IV than under Henry VI; the court was led by favorites, justice was perverted, strength was pitted against weakness; riots, robberies, forcible entries were prevalent as before. The house of York failed, as the house of Lancaster had failed, to justify its existence by wise administration."<sup>57</sup>

<sup>52</sup> 13 Rep., 64.

<sup>53</sup> 7 Rob. Pract., ch. 1, § 14, p. 107 to 109.

<sup>54</sup> 3 Stubbs, 280.

<sup>55</sup> 3 Reeve's Hist. of Engl. Law, pp.

108, 109.

<sup>56</sup> 3 Stubbs's Const. Hist., ch. 18, pp. 272, 273.

<sup>57</sup> *Id.*, p. 273.

The York kings have left an evil reputation for judicial cruelties; the charge is true, although it must be shared with the men who lent themselves to such base transactions, and with the age which was sufficiently demoralized to tolerate them."<sup>58</sup>

Richard III aimed to enlist the nation on his side; and to be viewed as the restorer of its ancient liberties.<sup>59</sup> In the petition to him mentioned in ch. 26, § 6, p. 853, are the words:

"We be determined rather to adventure and commit us to the peril of our lives, and jeopardy of death than to live in such thralldom and bondage as we have done long time heretofore, oppressed and injured by extortions and new impositions against the laws of God and man, and the *liberties and old policy and laws of this land*, wherein every Englishman is inherited."<sup>60</sup>

In parliament Richard's measures showed anxiety to purchase a popularity in which the bloody opening of his reign might be forgotten."<sup>61</sup>

William Huse (or Hussey), whose patent of chief justice was renewed on the accessions of Edw. V, Richard III and Hen. VII, *successfully remonstrated* in 1 H. VII, fo. 26, against the judges being consulted before-hand in crown cases.<sup>62</sup> Lord Coke says of this Chief Justice,

He "besought King Henry the Seventh that he would not desire to know their opinions before-hand for Humfrey Stafford; for they thought it should come before them in the King's Bench judicially, and then they would do that which of right they ought; and the King accepted it. And therefore," Lord Coke says, "the judges ought not to deliver their opinions before-hand upon a case put, and proofs urged of one side in absence of the party accused; especially in cases of high nature, and which deserve so fatal and extreme punishment. For how can they be indifferent who have delivered their opinions before-hand without hearing of the party, when a small addition or subtraction may alter the case. And how doth it stand with their oath who are sworn that they should well and lawfully

<sup>58</sup> *Id.*, p. 280; Green's Short Hist., ch. 6, § 3, p. 304 to 311; Hist. of Engl. Peop., book 5, ch. 1, vol. 1, edi. 1879, p. 6, *et seq.*

<sup>59</sup> *Id.*, p. 63.

<sup>60</sup> Cotton's Abr., f. 713. Instead of the words in italics are the words

'*liberty and laws of this realm*,' in Green's Hist. of Engl. Peop., book 5, ch. 1, vol. 1, edi. 1879, p. 63.

<sup>61</sup> Green's Hist. of Engl. Peop., book 5, ch. 1, vol. 1, edi. 1879, p. 64.

<sup>62</sup> Foss's Biogr. Jurid.; citing 3 Inst., 29.

serve our Lord the King and his people in the office of a justice? and they should do equal law and execution of right to all his subjects, &c.”<sup>63</sup>

“The law so regards the weal public, that although in actions popular the King shall have the suit solely in his own name for the redress of it, yet by his pardon he cannot discharge the offender; for this, that it is not only in prejudice of the King but in damage of the subjects”—“as if a man ought to repair a bridge, and for default of reparation it falls into decay; in this case the suit ought to be in the name of the King, and the King is sole party to the suit but for the benefit of all his subjects. And for this if the King pardon it, yet the offence remains; and in any suit in the name of the King, for redress of it, the offender ought (notwithstanding the pardon) to make and repair the bridge for the benefit of the weal public; but, peradventure, the pardon shall discharge the fine for the time past.”<sup>64</sup>

“If one be bound to the King in a recognizance for to keep the peace against one, and other the liege people of the King,—in this case the King, before the peace, cannot pardon or release the recognizance.”<sup>65</sup>

6. *Of learning and literature before and in the fifteenth century. In this century books of value produced and printed north of the Alps. Of Littleton's Tenures: Statham's Abridgment: and Lyndewode's 'Constitutiones Provinciales.' Lyndewode's view of the Common Law as to probate of wills recognized.*

It may be admitted that books were scarce in the thirteenth, the fourteenth, and the early part of the fifteenth century.

“In a Close Roll, dated 29th of March, 1208, King John writes to the Abbot of Reading to acknowledge that he had received, by the hands of the Sacrist of Reading, six volumes of books, containing the whole of the Old Testament. The receipt is also acknowledged of ‘Master Hugh de St. Victorie’s Treatise on the Sacrament;’ the ‘Sentences of Peter, the Lombard;’ the ‘Epistles of St. Augustine on the city of God, and on the third part of the Psalter;’ ‘Valerian de Moribus;’ ‘Origen’s Treatise on the Old Testament;’ and ‘Candidus Arianus to Marius.’ The following month the King wrote to the

<sup>63</sup> 3 Inst., 29.

<sup>64</sup> “And with this agrees 37 H. VI, 4, 6;” and 17 and 18 Eliz. “If a bridge is reparable by a subject, and it falls to decay, and the King pardons him from repairing it, yet this shall not excuse him, but he shall repair it notwithstanding, because others, viz: all the subjects of the realm have an in-

terest of it.” *Nicholls v. Nicholls*, Plowd. 487; cited in 12 Rep., 30.

<sup>65</sup> “As is agreed in 11 H. IV, 43; 37 H. VI, 4; 1 H. VII, 10. And the reason is, although the recognizance be made to the King solely, yet inasmuch as this is made for the benefit and safety of the subjects of the King, in such case it cannot be discharged.” 12 Rep., 30.

same abbot to acknowledge the receipt of his copy of Pliny, which the abbot had in his custody."

"In 1249, King Henry III orders Edward, the son of Otho, of Westminster, to cause to be purchased certain church service books, and to give them to the constable of Windsor castle, that he might deliver them by his own hand to the officiating chaplains in the new chapel at Windsor, to be used by them, and they were then to be held responsible to the constable for 'this library,' consisting of eight books. Another Close Roll of the same King, dated 1250, commands Brother R. de Sanford, Master of the Knights of the Temple in England, to allow Henry of the Wardrobe, the bearer, to have for the Queen's use, a certain great book, which was in their house at London, written in the French dialect, containing, "The Exploits of Anrochia, and of the Kings and others."<sup>66</sup>

"Henry V, who had a taste for reading, borrowed several books, which were claimed by their owners after his death. The Countess of Westmoreland presented a petition to the Privy Council, A. D., 1424, representing that the late king had borrowed a book from her, containing the 'Chronicles of Jerusalem,' and the 'Expedition of Godfrey of Boulogne'; and praying that an order might be given, under the privy seal, for the restoration of the said book. This order was granted with great formality. About the same time John, the prior of Christ church, Canterbury, presented a similar petition to the Privy Council, setting forth that the king had borrowed from his priory a volume containing the works of St. Gregory; that he had never returned it; but that in his testament he had directed it to be restored; notwithstanding which, the prior of Shine, who had the book, refused to give it up. The Council, after mature deliberation, commanded a precept, under the privy seal, to be sent to the Prior of Shine, requiring him to deliver up the book, or to appear before the Council to give the reason of his refusal."

"The Royal Library of France, which had been collected by Charles V, VI and VII, and kept with great care in one of the towers of the Louvre, consisted of about 900 volumes, and was purchased by the Duke of Bedford, A. D., 1425, for 1200 livres."

There is quoted "from Comines the fact that Louis XI was obliged to deposit a considerable quantity of plate, and to get one of his nobility to join with him in a bond under a high penalty to return it, before he could procure the loan of one volume, which may now be purchased for a few shillings."<sup>67</sup>

<sup>66</sup> "Probably a French translation of a Latin heroic poem, entitled 'The War of Antioch; or, the Third Crusade of Richard I,' written by Joseph of Exeter, otherwise called Josephus Iscarius." Penny Magazine for 1834, March 1, pp. 87, 88. "When a priest named Henry Beda, in the year 1406, bequeathed his manuscript breviary to the

church of Jacques la Boucherie, he left at the same time to William l' Exale, the church warden of the said church, the sum of forty sols, to pay the expense of having a cage made in which the breviary might be kept." *Id.*, p. 415.

<sup>67</sup> Penny Magazine for 1834, March 1, pp. 87, 88.

Admitting these facts, it may be proper to enquire whether of learning and literature, there was in the *fifteenth* century so great a decline as is supposed by a recent writer.<sup>68</sup> Mr. Green says:

"The erection of colleges (which began in the thirteenth century, but made little progress till the time we have reached,) failed to arrest the quick *decline of the universities*, both in the numbers and learning of their students. Those at Oxford amounted to only a *fifth* of the scholars who had attended its lectures a century before, and Oxford Latin became proverbial for a jargon in which the very tradition of grammar had been lost. *Literature*, which had till now rested mainly in the hands of the clergy, *came almost to an end.*"<sup>69</sup>

Next after the words "all literary production was nearly at an end," was the statement "there is *not a single work*, for instance, either in Latin or English, *which we can refer to the ten years of the reign of Edward the Fourth.*"<sup>70</sup> And on another page was the further statement, that "not a single book of any *real value*, save those of Sir John Fortescue and *Phillipe de Commines*, was produced north of the Alps *during the fifteenth century.*"<sup>71</sup> The author of the present volume not having seen these statements in Mr. Green's more recent work, supposes they may have been intentionally omitted therein. It is very clear that to the reign of Edw. IV (lasting, as appears in ch. 25, p. 819, *et seq.*, from 1461 to 1483,) may be referred 'Littleton's Tenures,'<sup>72</sup> which Sir Edward Coke regarded as "the ornament of the common law, and the most perfect and absolute work that ever was written on any humane science";<sup>73</sup> and which Lord Campbell has pronounced "a work of higher authority than any other in the laws of England,"<sup>74</sup> and "the fame of" which (it is observed by Mr. Reeves) "has not been confined to this island:

"As the Norman lawyers made Glanville a model upon which to

<sup>68</sup> Green's Short Hist., ch. 6, § 3, p. 306.

<sup>69</sup> Green's Hist. of Engl. Peop., book 5, ch. 1, vol. 2, edi. 1879, p. 13.

<sup>70</sup> Green's Short Hist., ch. 6, § 3, p. 306.

<sup>71</sup> *Id.*, ch. 6, § 4, p. 315.

<sup>72</sup> "He compiled this book when he was judge, after the fourteenth year of

the reign of King E. IV, but the certain time we cannot yet attain unto, but (as we conceive) it was not long before his death." Coke's Preface to 1 Inst. Lyttelton died August 23, 1481.

<sup>73</sup> Preface to 1 Inst.

<sup>74</sup> 1 Lives of Chancellors, ch. 23, p. 399 of 2d edi. (1846); p. 374 of Boston edi. 1874.



form their *coustumier* and give system to their jurisprudence, a modern writer of that country has lately composed a comment on Littleton as the best help towards illustrating the customs and laws of that duchy."<sup>75</sup>

There was in the fifteenth century appreciation of books of 'real value.' When Alphonso V, King of Arragon, was asked who were the counsellors he liked the best, and who gave him the most excellent advice; he replied, 'my books, because they tell me without passion and without any view of interest what is requisite for me to know.'<sup>76</sup> This king is reported to have said: "There were only four things in the world worth living for, old wine to drink, old wood to burn, old books to read and old friends to converse with."<sup>77</sup>

In 1416, when Alphonso came to the throne of Arragon, and for some years afterwards, books of real value (whether old or new) were very scarce, and brought an exceedingly high price. Yet in those years some books<sup>78</sup> of real value were produced north of the Alps. And in less than half a century after 1416, the art of printing with movable type was in operation in Europe.<sup>79</sup>

After mentioning that in 1435, "as we learn from the records of the city of Strasburg, a lawsuit was carried on there between John Gutenberg, a gentleman of Mentz, celebrated for mechanical ingenuity, and Drizehn, a burgher of the city, who was his partner in a copying machine," Sir James Mackintosh says,

"The copying machine was the printing press, which has changed the condition of mankind. The single and very simple operation of Gutenberg's invention in reducing the price of books, has augmented tenfold the mass of reason employed in human pursuits, and multiplied beyond the possibility of calculation, the chances of active genius and wisdom."<sup>80</sup>

As to "the first specimen of the art of printing," there is sometimes inaccurate language.<sup>81</sup>

<sup>75</sup> Hist. of Engl. Law, ch. 26, vol. 3, edi. 1869, p. 114.

<sup>76</sup> Seward's Anecdotes, vol. 4, p. 37.

<sup>77</sup> Dr. King's Anecdotes, Lond. edi. 1813, pp. 3, 4. <sup>78</sup> 9 Rep., pp. 37, 38.

<sup>79</sup> 7 Harl. Miscel., edi. 1810, p. 105; 10 *Id.*, p. 506, *et seq.*; 1 Pinnock's

Guide to Knowledge, p. 605; Penny Magazine, 1833, p. 422; *Id.*, 1837, p. 501.

<sup>80</sup> 1 Mackintosh's Engl., Phila. edi. 1830, p. 314.

<sup>81</sup> Pinnock's Guide to Knowledge, vol. 4 (1836), p. 22.

"This however is certain, that about 1438, Gutenberg made use of movable types of wood. In 1443 he returned from Strasburg" "to Mentz, and in 1450 formed a copartnership with John Faust, or Fust, a rich goldsmith," who "furnished money to establish a press, in which the Latin Bible was first printed."<sup>82</sup>

The year in which "the celebrated Bible was executed by them," has been mentioned as 1455,<sup>83</sup> and recently as 1450.<sup>84</sup>

After the connection between Faust and Gutenberg was dissolved, Faust retained the press and used it in company with Peter Schoeffer, of Gernsheim.<sup>85</sup> At Washington city, in the library of Congress, there is a volume which is lettered on the back "Clementis V, Constitutiones 1467," and appears to have been printed beautifully at Mentz in that year (1467). In latin, near the end of the volume is the Colophon, whereof the subjoined translation,<sup>86</sup> by the librarian at Washington, is (in manuscript) prefixed to the volume.

Mr. Green makes this observation:

"In the last thirty years of the fifteenth century, ten thousand editions of books and pamphlets are said to have been published throughout Europe, the most important half of them of course in Italy. All the Latin authors were accessible to every student before the century closed. Almost all the more valuable authors of Greece were published in the twenty years that followed."<sup>87</sup>

<sup>82</sup> Encyclop. Am., vol. 6, tit. '*Gutten-  
burg*, more properly Gutenberg.'

<sup>83</sup> Watkins's Biogr. Dict., edi. 1822, tit. *Guttenberg*; citing Dibdin's Typographical Antiquities.

<sup>84</sup> In the United States of America, in 1881, in the Baltimore *Sun* of April 8, is the following: "The event of the sale of the Brinley collection of books, in New York last night, was the sale of a Gutenberg Bible, printed in 1450, the first book printed with moveable type. John R. Bartlett, who is buying for the Carter-Brown library, made the first bid of \$5,000, which was run up in bids of \$500 and \$250 by Brayton Ives and Hamilton Cole, until \$8,000 was bid, at which figure it was knocked down to Mr. Cole."

<sup>85</sup> Encyclop. Am., vol. 6, tit. *Gutten-*

*berg*.

<sup>86</sup> Translation of the Colophon.

"In the fair city of Mentz, of the famous German nation, which the favor of God has deigned to prefer and distinguish before all other nations of the earth, by the revelation and bounteous gift of so great an art, the present most renowned work of the Constitutions of Clement V was thus formed and diligently finished for the glory of God by Peter Schoeffer of Gernsheim, by means of a certain skillful invention of printing or letter-making, without any use of the pen, in the year of the incarnation of our Lord 1467, on the eighth day of the month of October."

<sup>87</sup> Green's Short Hist., ch. 6, § 4, p. 321; Hist. of Engl. Peop., book 5, ch. 2, vol. 2, edi. 1879, p. 82.

It is said that the memory of Thomas Bourchier, archbishop of Canterbury and Chancellor of England, "is principally respected for having been an active instrument in introducing the art of printing into England."

"It is related that, having heard of its invention, he induced King Henry VI, towards the close of his reign, to send an officer of his wardrobe, Robert Turnour, to Haarlem, where John Guttenburg had set up a press, he himself supplying a considerable part of the expense. Turnour succeeded in bringing over Frederic Corsellis, one of the compositors, with a fount of types, which the archbishop caused to be taken to Oxford, where the first 'press was accordingly, through his means, established in, or soon after, the year 1464.'"<sup>88</sup>

William Caxton had, in the Low Counties, caused to be printed "Recueil des Histoires de Troye;" and was, in 1468, at Bruges, when Margaret, sister of Edward IV, arrived there, and was married to the Duke of Burgundy.<sup>89</sup> Caxton mentions his translating it (his *Destruction of Troy*) out of French into English at her commandment.

"He says of the two first books, that by her commandment he began the translation at Bruges, continued it in Ghent, and finished it at Cologne in 1471; and that he was at Cologne when he began the third book for her contemplation."<sup>90</sup>

The original 'Recueil des Histoires de Troye' may have been the first book ever printed in the French language.<sup>91</sup> Caxton's translation of it is regarded as the first book printed in *English*.<sup>92</sup>

A list of sixty-four books, printed by Caxton, embraces<sup>93</sup> "Chess, Game of, 1474," which is regarded as the first production of the *English press*. In that year (1474) Caxton (after being abroad for

<sup>88</sup> Foss's Biogr. Jurid. It is so said since 3 Turner's Engl., note 25, on p. 353, of 2d edi. (1825.)

<sup>89</sup> Allibone's Dict., tit. *Caxton*; 4 Turner's Engl., ch. 3, edi. 1825, p. 118, (note.)

<sup>90</sup> *Id.*

<sup>91</sup> Penny Magazine for 1841, Jan., pp. 2, 3.

<sup>92</sup> Pinnock's Guide to Knowledge, vol.

4 (1836), p. 22; 3 Turner's Engl., edi. 1825, p. 378. The address by John Russell (mentioned in ch. 26, § 2, p. 849,) may have been printed in 1470 at Bruges or Rouen in *Latin*. Foss's Biogr. Jurid. It does not appear to have been printed there in *English*.

<sup>93</sup> (As to Troy) 'Recueil des Histoires' (without date), and 'Histories of' 1471. Allibone's Dict., tit. *Caxton*.

30 years) is supposed to have returned to England, and to have been printing in Westminster Abbey by the abbot's permission.<sup>94</sup>

Among those mentioned, as encouraging Caxton's press, were John Tiptoft, earl of Worcester;<sup>95</sup> that accomplished man,<sup>96</sup> Lord Rivers, brother of the Queen of Edw. IV; Edward himself,<sup>97</sup> and his brother Richard.<sup>98</sup> In a voyage in 1473, Rivers amused himself with 'the Dictes or Sayenges of Philosophers;' his translation was printed by Caxton four years afterwards. This is mentioned as "the first book from his press with the year and place subjoined."<sup>99</sup>

The before mentioned list of 64 books embraces 28 without date,<sup>100</sup> one of which is Lyndewood. The 'qu' opposite his name is answered by what appears in ch. 24, § 10, p. 787; in Reeves's Hist. of Engl. Law;<sup>101</sup> and in this section.

In the first of Tanger's five volumes of "*Annales Typographici ab artis inventæ origine ad annum M. D.*," is mention under the caption '*Londini*,' of one book in each of the years 1480, 1481, and 1493; of two in 1494; three in 1496; four in 1497; three in 1498; and four in 1499. One of the three in 1496 is—

"*Constitutiones provinciales ecclesie Anglicane per D Wilhelmum Lyndewode utriusque juris doctorem edite Londini per Richardum Pynson 1496-8.*"

And one of the four in 1499 is—

"Abridgment of the statutes. In fine: *Abbrevimentum statutorum*

<sup>94</sup> *Id.*; 1 Granger's Biogr. Hist., p. 66, edi. 1779; 3 Turner's Engl., edi. 1825, pp. 352, 353; Penny Magazine for 1841, Jan., pp. 2, 3.

<sup>95</sup> Mr. Green says: "He had wandered during the reign of Henry the Sixth in search of learning to Italy; had studied at her universities, and become a teacher of Padua, where the elegance of his Latinity drew tears from the most learned of the Popes, Pius the Second, better known as Æneas Sylvius." Hist. of Engl. Peop., book 5, ch. 1, vol. 2, edi. 1879, pp. 58, 59.

<sup>96</sup> 3 Stubbs's Const. Hist., ch. 18,

p. 221, note.

<sup>97</sup> Green's Hist. of Engl. Peop., book 5, ch. 1, vol. 2, p. 52.

<sup>98</sup> *Id.*, p. 59.

<sup>99</sup> (Ames, typ., 1 Dibdin, 104,) 'imprinted by W. Caxton at West. 1477.' 3 Turner's Engl., edi. 1825, p. 375, note 11.

<sup>100</sup> Of those with a date, there is 1 in 1475, 1 in 1477, 1 in 1478, 3 in 1480, 4 in 1481, 1 in 1482, 5 in 1483, 4 in 1484, 3 in 1485, 2 in 1487, 2 in 1489, and 2 in 1499. Caxton died in 1492.

<sup>101</sup> Ch. 26, edi. 1869, vol. 3, p. 115 to 118.

*impressum per Richardum Pynson et totaliter finitum nono die mensis Octobris anno domini 1499.*

*Sine nota anni,*

are No. 20 to 31; Nos. 20 and 21 being 'Lyttleton's tenures;' No. 22, 'Vieux Abridgement des Statutis;' Nos. 28 and 29 'Nova Statuta', and No. 30 'Stratham's Abridgment.'

Nicholas Statham was elected reader of Lincoln's Inn in Lent 1471, 11 Edward IV (Dugdale's Orig. 249), and received on October 30, 1467, a patent for the grant of the office of second baron of the Exchequer in reversion on the death or surrender of John Clerke.<sup>102</sup>

No. 30 was by him. It is mentioned in the catalogue of Lincoln's Inn library;<sup>103</sup> and by Mr. Marvin<sup>104</sup> and Mr. Foss. The latter says:

"Although he never once is mentioned in the Year Books, an abridgment of the cases reported in them to the end of the reign of Henry VI, being the first attempt at a work of that nature, goes under his name."<sup>105</sup>

At Washington city, in the Library of Congress, is a copy which has been supposed to have been executed by William Le Talleur at Rouen for R. Pynson. In the State of Pennsylvania, in the Ridgeway branch of the Philadelphia library, is a copy on which is written, "printed by Richard Pynson (1503)."<sup>106</sup>

At Washington city, in the Library of Congress, there is a copy of Lyndewoode, not of the edition printed at Paris in 1505, but of that at Antwerp in 1525. As mentioned in ch. 24, § 10, p. 787, Parliament was opened in 9 H. VI by William Linwood, Doctor of the Law, Lord Coke, in 13 Rep. 46, mentions him as of "profound knowledge in the canon and civil law;" and in another volume says:

"Linwood, who was Dean of the Arches, and wrote *anno dom.* 1422, in the reign of King H. VI, *lib.* 3, tit. *De Testamentis*, fo. 124, 1,

<sup>102</sup> Foss's Biogr. Jurid. Mr. Foss says: "As the date of John Clerke's death is not known, and as Statham's name is never mentioned afterwards, it is uncertain whether he ever filled the office. All we know is, that either on his, or on Clerke's death, Thomas Whittington was

appointed second baron on Feb. 3, 1481, 20 Edw. VI."

<sup>103</sup> As 'Abridgment del Ley.'

<sup>104</sup> As "*Abridgment des livres annales et reportes cases en le ley de Angleterre.*"

<sup>105</sup> Biogr. Jurid.

<sup>106</sup> Gift of Henry J. Williams, Esq.

confesses that probate of wills belongs to the ordinaries *de consuetudine Angliæ et non de communi jure*, and that in other realms the ordinaries had it not; and in another place he affirms the power of the bishop in probate of wills, *per consensum regis et suorum procerum ab antiquo*.<sup>107</sup>

"It is held in 2 R. III, *Testament IV*, that it is but of late years that the church had the probate of wills in this land, until it was by an act, &c.; for *lay* people have probate of wills in all other places except England; and in many places in England the lords of manors have probate of wills at this day in their temporal courts. And *Tremail* there said that he is steward in his country, and the free tenants and bondmen prove their wills before him in the court baron; and so it has been used from time whereof, &c.; and therewith agreed, *Fineux* and all the Justices in 11 H. VII, 12*b*, that the probate of testaments belonged not to the spiritual court, but of late, &c.; and they have it not by the spiritual law."<sup>108</sup>

For the jurisdiction of the Ecclesiastical courts, the officers thereof, and the methods of proceeding therein, there may be reference to the Proctor's Practice.<sup>109</sup>

7. *The Roman Law furnished principles proper to be considered in Chancery.*

Of the Roman law, besides what is said in ch. i, § 11, p. 28 to 31, and ch. xxi, §§ 5 and 6, pp. 723, 724, there may be seen in a work of extensive circulation, the following observation:

"When principles of decision came to be acted upon and established in chancery, the Roman law, furnished abundant principles to erect a superstructure, at once solid, convenient and lofty, adapted to human wants and enriched by all the aids of human wisdom, experience and learning."<sup>110</sup>

8. *Of the Royal Council. How far its action in judicial proceedings was restricted. Whether in Chancery there could be jurisdiction in matters cognizable at the common law. Meaning of the rule 'Nullus recedat a cancellaria sine remedio.'*

The royal council "has been seen, from the minority of Henry III

<sup>107</sup> 9 Rep., pp. 37, 38. See also 2 Roll's Abr., pp. 217, 218, tit. *Prærogative le Roy*, (M) and (N.)

<sup>108</sup> So stated in *Hensloe's* case, 9 Rep., 37*b*. 'Other cases are in 2 Br. Abr., fol. 256, tit. '*Testament & Volunt.*'

<sup>109</sup> Edi. 1816. An Ecclesiastical court has its Register; sometimes but one Register; sometimes more. *Id.*, p. 4 to p. 26.

<sup>110</sup> 1 Story's Eq., ch. 1, § 23, p. 17 of 12th edi. 1877.

onwards, constantly increasing its power and multiplying its functions; retiring into the back ground under strong kings, coming prominently forward when the sovereign was weak, unpopular or a child. At last, under the nominal rule of Richard II, but really under the influence of the men who led the great parties in the parliament and in the country, it has become a power, rather co-ordinate with the king than subordinate to him, joining with him in all business of the state, and not merely assisting but restricting his action. And, as the council has multiplied its functions and increased its powers, the parliament has endeavoured to increase the national hold over the council by insisting that the king should nominate its members in parliament, and by more than once taking the nomination of the consultative body out of his hands, superseding for a time by commissions of reform both the royal council and the royal power itself."<sup>111</sup>

The function of the council "was to counsel and assist the king in the execution of every power of the crown which was not exercised through the machinery of the common law. It was" only "in the matter of judicial proceedings," *at law*, "that their action was restricted; and as the king had long ceased to act as judge in person in the courts, his council had no place there. The petitions against their assumption of jurisdiction in matters cognizable at common law, which had been frequent under Richard II"<sup>112</sup> did not wholly cease under his successor."<sup>113</sup>

After the statute of 15 Hen. VI, c. 4, the provision whereof is stated in ch. 24, § 14, p. 791; and that of 31 and 32 Hen. VI, ch. 2, mentioned in same chapter, § 22, p. 805, to-wit: in 18 Edw. IV, *Morton*, Master of the Rolls, acted upon the principle that one is not bound to answer in the chancery for matter determinable at the common law.<sup>114</sup> In 21 Edw. IV was the case wherein *Fairfax*, J., intimated that a *subpœna* in chancery was too often resorted to for a matter for which an action on the case would lie.<sup>115</sup>

<sup>111</sup> 3 Stubbs, pp. 247, 248. "The council of the Lancastrian kings is the real, though perhaps not strictly the historical germ of the cabinet ministries of modern times. When, in 1406, the House of Commons told the king that they were induced to make their grants, not only by the fear of God and love for the king, but by the great confidence which they had in the lords then chosen,

and ordained to be of the king's continual council, they seem to have caught the spirit and anticipated the language of a much later period." *Id.*, p. 248.

<sup>112</sup> 2 Stubbs, 606; 3 *Id.*, 252.

<sup>113</sup> *Id.*, p. 252.

<sup>114</sup> 18 E. IV, 13, is in Cary's Rep., 21.

<sup>115</sup> 21 E. IV, 23, is in 1 Br. Abr., tit. *Conscience and Subpœna*, fo. 163, pl. 21; History of Chancery, edi. 1726, p. 49.

The rule *nullus recedat a cancellaria sine remedio* is meant only of original writs.<sup>116</sup>

9. *Of cases wherein the council might advise the King or hear petitions addressed to him. They were referred sometimes to the chancellor to act by advice of justices; sometimes to him alone.*

"Beyond the region of the common law the council retained the right of advising the king in knotty cases and appeals, in which the opinion of the judges was likewise asked."<sup>117</sup>

"The office of the council in hearing petitions addressed to the king continues during the period before us much the same as it had been under Edward III and Richard II; the chamberlain being the officer to whose care such documents were intrusted."<sup>118</sup>

The proceedings of parliament show that authority was given to the *chancellor* in some cases to act by advice of justices, in other cases to act alone. Of the former kind is a case in 3 Hen. V,<sup>119</sup> mentioned in ch. 23, § 4, p. 767; of the latter is a case in 6 Hen. VI,<sup>120</sup> mentioned in ch. 24, § 8, p. 784, and a case in 9 Hen. VI, wherein

"Authority is given to the Chancellor of England to end the suit between Lewin le Clarke, burgess of Gaunt and William Brampton, of Chesterville in Derby touching a bargain of wool."<sup>121</sup>

10. *The Chancery a fundamental court; in what sense it has been time out of the memory of man. Of its two courts one ordinary, the other extraordinary, secundum æquum et bonum. When the chancellor began to hold a 'court of equity.'*

"In anno 10 Ed. IV, fol. 53, all the judges of England did affirm that the *chancery*, King's Bench, Common Pleas and Exchequer, be all the King's courts, and have been time out of memory of man, so as no man knoweth which of them is the most ancient."<sup>122</sup>

In what sense the *chancery* had then been 'time out of memory

<sup>116</sup> *Cook v. Fountain*, 3 Swanst., 601, and note. Of cases in 4 H. VII, and 7 H. VII, there is a notice in Fitzh. Abr. under tit. *Subpœna*; of 4 H. VII, 4, 7 H. VII, 11, and 10 H. VII, 4, there is a statement in Roll's Abr. under tit. *Conscience and Subpœna*, fo. 162, 163, of vol. 1, edi. 1576.

<sup>117</sup> 3 Stubbs's Const. Hist., ch. 18,

p. 253.

<sup>118</sup> 3 Stubbs, 254; Green's Short Hist., ch. 4, § 2, pp. 192, 193, and ch. 6, § 3, p. 314.

<sup>119</sup> In Cotton's Abr., p. 548, No. 49.

<sup>120</sup> *Id.*, p. 588, No. 15.

<sup>121</sup> *Id.*, p. 599, No. 20.

<sup>122</sup> Preface to 8 Rep., xv; 4 Inst., 79.



of man' may be gathered from what has been said under the preceding titles: "In pleading of anything done in *chancery*, you do not begin your plea with a prescription as in" "inferior pretended courts, but you plead a thing done in the court of *chancery* as you do all things done in the courts of common pleas or king's bench; whereof the reason is, that they are fundamental courts, as ancient as the kingdom itself, and known to the law."<sup>123</sup>

In the parliament of 14 E. IV the chancellor is called the Chief Judge within the realm.<sup>124</sup>

"In the chancery are two courts, one ordinary *coram domino rege in cancellariæ*, wherein the lord chancellor or lord keeper of the great seal proceeds according to the right line of the laws and statutes of the realm, *secundum legem et consuetudinem Angliæ*; the other extraordinary, according to the rule of equity, *secundum æquum et bonum*."<sup>125</sup>

Of the former court Lord *Coke* treats first. Without repeating what is said as to that branch of jurisdiction,<sup>126</sup> it is proposed now to speak "of the extraordinary proceeding according to *the rule of equity, secundum æquum et bonum*."<sup>127</sup>

There was a time when "the chancellor had no court of *equity*, but only a court of record of ordinary jurisdiction, according to the course of the common law."<sup>128</sup> Of 'Diversité des Courtes' (*or de Courtz*), which is mentioned in ch. 17, § 10, p. 466, and to which Mr. Reeves refers on one page as *written* in the 21st year of Henry the Eighth,<sup>129</sup> and on another as *published* in 1525,<sup>130</sup> Lord *Coke* says:

"It treateth of the jurisdiction of the chancellor according to his ordinary power, but nothing of that which he holdeth in causes of equity."<sup>131</sup>

We must then, from other sources, try to learn when the chancel-

<sup>123</sup> 17 Jac. I, *Martin v. Marshal, &c.*, Hob. 63 a, 2 Rolle 109 (cited in 6 Rob. Pract., ch. 62, § 4, p. 669); *Eyres, J.*, in 4 W. & M., in *Howard v. Tremaine*, 1 Show., 364.

<sup>124</sup> Rot. Parl., No. 26; cited in 1 Roll's Abr., tit. *Chancellor*, p. 386, pl. 12.

<sup>125</sup> 4 Inst., 79.

<sup>126</sup> 4 Inst., 79 to 82; Green's Short Hist., ch. 4, § 2, pp. 192, 193, ch. 6, § 3, p. 314.

<sup>127</sup> 4 Inst., 82. <sup>128</sup> *Id.*, 552.

<sup>129</sup> Hist. of Engl. Law, ch. 30, ed. 1869, vol. 3, p. 401.

<sup>130</sup> *Id.*, p. 433.

<sup>131</sup> 2 Inst., 552.

lor began to exercise jurisdiction in causes of *equity*—when he began to hold a court of equity’?

There is mention in ch. 21, § 9, p. 735, of Lambard’s *Archainomia*; and in 2 Inst., 552, of “Master Lambert that was a master of the Chancery, and had the keeping of the records of the Tower, and had abridged many of the principal of them (which” Lord *Coke* had “seen) and was well learned, and besides a great searcher of antiquities.” Lord *Coke* states that Master Lambert, “in his treatise of the jurisdiction of courts saith, that he could not find that the chancellor held any court of equity, nor that any causes were drawn before the chancellor for help in equity before the time of Hen. IV.”<sup>132</sup> Referring to this, Dr. Wooddesson says:

“Lambard tells us he does not remember that in our reports of common law there is any mention of causes before the chancellor, for help in equity, but only from the time of King Henry IV. Lamb. Arch., 73. But this is very different from saying as he is made to do, 2 Inst., 552, that he could not find that the chancellor held any court of equity before that time.”<sup>133</sup>

Cases in 2, 7, 8, 9 and 11 Hen. IV, are cited under title *Petition* in Fitzherbert’s Abr.<sup>134</sup> As to a court of equity, Lord Coke says,

“It is thought that this court of equity began under *Henry Beauford* (son of John of Gaunt), that great bishop of Winchester, afterwards cardinal, in the reign of Hen. V, and in the beginning of H. VI, and increased while *John Kemp*, bishop of York and cardinal, was lord chancellor, in the 28th year of H. VI.”<sup>135</sup>

In the reign of Hen. V the bills began to be in English; the proceedings afterwards became distinguished as by ‘English bill.’<sup>136</sup>

<sup>132</sup> In his volume, with a preface dated from Lincoln’s Inn the “22d of October, 1591,” Lambard says: “I do not remember that in our reports of common law there is any frequent mention of causes usually drawn before the chancellor for help in equity, but only from the time of King Henry the Fourth.” Archein., London, 1635, p. 67 of edition for Henry Seile; p. 75 of edi. for Daniel Frere.

<sup>133</sup> 1 Wood. Lect., p. 177 of 1st, p. 105 of 2d edi. (1834.)

<sup>134</sup> Of which there seems to have been editions in 1514 and 1516; a time of publication earlier than that mentioned on p. xxx of Preface to 10 Rep. As to 13 Hen. IV, there may be reference to Cotton’s Abr., pp. 479, 480, tit. 16.

<sup>135</sup> 2 Inst., 553, 4 *Id.*, 83.

<sup>136</sup> 1 Spence’s Eq., 348, and note (c.)

Some cases in the reign of Hen. V and Hen. VI are mentioned in Fitzherbert's Abr.<sup>137</sup> Other cases in which chancery jurisdiction was exercised in the reign of Henry the Sixth are mentioned in Br. Abr., under the title '*Conscience and subpoena*.'<sup>138</sup> But Mr. *Samuel Burrough* thinks "altho' the chancellor is supposed to be settled in Westminster Hall in this reign, yet he had no settled business in his court as a court of equity."<sup>139</sup>

There was progress in the reign of Edw. IV.

2 Edw. IV, 2. "If an obligation be made to B. to the use of C., now B. shall be compelled here," in chancery, "to sue upon that obligation."<sup>140</sup>

After this and other cases mentioned below,<sup>141</sup> to-wit: in June 1467, Edward the Fourth (as stated in ch. 25, § 6, p. 829) willed and commanded "that all manner of matters to be examined and discussed in his court of chancery, should be directed and determined *according to equity and good conscience*."<sup>142</sup> Below are cases in 7, 8 and 9 Edw. IV.<sup>143</sup> In the latter year is the case mentioned in ch. 25, in the commencement of sect. 5, p. 826. Short cases in the ancient abridgments<sup>144</sup> support the observation of Sir *William Blackstone*, that "in Edward IV's time, the process by bill and *subpœna* was be-

<sup>137</sup> Under title *Petition*, in 7 Hen. V, one case; and, in Hen. VI, a case in the 10th, and another in the 34th year; under title *Subpœna*, cases in 31, 32, 35 and 37 years; and under tit. *Bill* cases, in 7 H. VI, 22 H. VI, 31 H. VI, and 37 H. VI.

<sup>138</sup> Fol. 162, of vol. 1, edi. 1576: Pl. 4, 37 H. VI, 13; pl. 5, 37 H. VI, 36; pl. 6, 39 H. VI, 26.

<sup>139</sup> Hist. of Chancery, edi. 1726, p. 49.

<sup>140</sup> Cary's Rep., p. 20.

<sup>141</sup> In Fitz. Abr., under tit. '*Subpœna*' cases, in 4 and 5 Edw. IV. In Br. Abr., under tit. '*Conscience and Subpœna and Injunctions*,' pl. 9, 2 E. IV, 2; pl. 10, 4 E. IV, 37; pl. 11, 5 E. IV, 7; pl. 12, 6 E. IV, 10.

<sup>142</sup> Legal Judic. in Ch., edi. 1727, ch. 2, p. 37, and ch. 4, p. 137.

<sup>143</sup> In Fitzh. Abr., under tit. *Subpœna*; and under tit. *Byll*. In Br. Abr., under tit. '*Conscience and Subpœna and Injunctions*,' pl. 13, 7 E. IV, 14; pl. 27, 7 E. IV, 29; pl. 14, 8 E. IV, 4; pl. 15, E. IV, 5; pl. 2, 9 E. IV, 2; pl. 26, 9 E. IV, 15; pl. 3, 9 E. IV, 41.

<sup>144</sup> There are in Fitzherbert's Abridgment, under tit. *Subpœna* cases in 11, 14, and 22 Edw. IV; under title *Petition*, 22 Edw. IV; and under tit. *Byll* cases in 11 Edw. IV.

In Brooke's Abridgment, under title "Conscience and Subpœna and Injunctions," there are pl. 17, 11 E. IV, 8; pl. 18, 16 E. IV, 4; pl. 19 and pl. 20, 16 E. IV, 9; pl. 28, 18 E. IV, 11; pl. 21, 21 E. IV, 23; pl. 22, 21 E. IV, 78; pl. 23, 22 E. IV, 6; pl. 16, 22 E. IV, 37.

come the daily practice of the court.”<sup>145</sup> The advances which in this reign were “made by the court of equity” are alluded to in Reeves’ Hist. of Eng. Law.<sup>146</sup>

In the short reign of Edward V there is an instance of the Lord Chancellor *Russell* exercising judicial functions in chancery: (*besides the Master of the Rolls*), he called to his assistance two justices, *Choke* and *Catesby*,<sup>147</sup> in a case heard before him about June 22, 1483.<sup>148</sup> In the reign of Hen. VII “the chancellor continued in the exercise of that equitable jurisdiction which had been gradually assumed by his predecessors.”<sup>149</sup>

*II. Ordinances of Chancery (made in 12 Ric. II) amended in time of Hen. V, and renewed with additions and reformatiōns. Of the Master of the Rolls; eleven other Masters; and the Register.*

“The ancient ordinances of the court of chancery” made in 12 Ric. II<sup>150</sup> were “amended in the time of Hen. V.”

After this, there was a renewal of them with additions and reformatiōns. The title of the last is *Renovatio ordinum Cancellariæ cum novis additionibus and reformationibus eorundem*.<sup>151</sup>

This “renovacio ordinum” provides—

1. That there shall be “*duodecim magistri cancellariæ sicut olim ordinarii*.”<sup>152</sup>

2. “*Quod custos rotulorum sit unus et primus eorundem duodecim.*

3. “*Quod tres preceptores sive duo saltem eorem ex duodecim ordinariis et tertius ab extraordinariis, ad voluntatem, &c.*”<sup>153</sup>

11, 13, 14, 15, are as to *two registers*.

<sup>145</sup> 3 Bl. Com. 53; 1 Spence’s Eq., 349.

<sup>146</sup> Vol. 3, ch. 24, edi. 1869, p. 25 to 29, and notes.

<sup>147</sup> *John Choke* and *John Catesby* were justices of the Common Pleas. Foss’s Biogr. Jurid.

<sup>148</sup> Year Book, fo. 6b; cited in *Id.*, p. 574, tit. *Russell*, John.

<sup>149</sup> Reeves’s Hist. of Engl. Law, ch. 27, p. 183 to 185. 1 Roll. Abr., tit. *Conscience and Subpana and Injunctions*, fol. 162 to 164, pl. 7, 29. Y. B. 4 H. VII, 4 b, is cited in 1 Campbell’s Lives

of Chancellors, ch. 26, p. 431 of 2d edi. (1826), p. 401 of Boston edi. 1874. See also ch. 28, § 7, ante, p. 870.

<sup>150</sup> Mentioned in ch. 21, § 12, p. 741.

<sup>151</sup> Legal Judic. in Ch., edi. 1727, p. 77; Orders in chancery by Sanders, pp. 1, 2, note b.

<sup>152</sup> As to *olim* (formerly), see ch. 21, § 7, pp. 727, 728.

<sup>153</sup> In Fleta’s time all the twelve masters were preceptors. Legal Judic. in Ch., edi. 1727, p. 78.

16. "*Quod custos rotulorum vel unus ex preceptoribus prædictis si adsint vel unus de duodecim ordinariis magistris presentes in curia poterint ad petitionem consiliariorum vel partis seu ejus attornati altera parte vel ejus attornato presente etiam in absencia domini cancellarii causas dirigere et in ordinem disponere (videlicet) assignare terminos ad respondendum replicandum, rejungendum testes producendum eorumque dicta publicandum dies ad causas audiendum et cetera breviter faciendum; preterquam quod gratias pro peremptorium lapsu non concedant nec sententiam definitivam ferant nam hæc specialiter domino cancellario seu custodi magni sigilli reserventur.*"<sup>154</sup>

In hearing causes the chancellor has been assisted not only by justices but by those who were not judges. In 14 Edw. IV he gave his opinion by advice of the King's serjeants.<sup>155</sup>

"15 H. VII, 14. In the Exchequer Chamber, before all the Justices and Sergeants there assembled, the Chancellor of England demanded their advice in a matter and rehearsed the case, &c." <sup>156</sup>

The Master of the Rolls has been mentioned as one of those whom the chancellor called to his assistance. At an early period his office was viewed as in its nature ministerial. The instance in ch. 28, § 14, p. 882, of a grant of the mastership of the Rolls to two persons and the survivor of them was used by way of argument to shew that the office is not in its nature judicial, but ministerial.<sup>157</sup>

In 9 E. IV, 5,<sup>158</sup> it is said "that in the chancery the *clarks* are of three forms, viz: the masters of the first."<sup>159</sup>—"Clerici de prima forma, they are named 9 E. IV, 6."<sup>160</sup>—"The King ever calleth them clericos *nostros*, and sometimes with a double *noster*, as clericos *nostros cancellariæ nostræ*."<sup>161</sup>

<sup>154</sup> *Id.*, pp. 78, 79; Langdell's Summary of Eq. Pl., note 1, p. xxix of Introduction. Cambridge, 1877.

<sup>155</sup> M. 14, E. IV, 4, Fitzh. Abr., tit. *Subpœna*, 15; cited in Legal Judic. in Ch., edi. 1727, ch. 5, p. 217.

<sup>156</sup> 15 H. VII, 14; cited in ch. 5, pp. 216, 217, of Legal Judic. in Ch., edi. 1727.

<sup>157</sup> *Id.*, ch. 4, p. 107 to 109.

<sup>158</sup> In the argument of *Bagot's* assize.

<sup>159</sup> Hargrave's Law Tracts, p. 293; from tract mentioned further in ch. 34, § 5.

<sup>160</sup> "And in the patent of John Kingeton, 2 H. IV, and likewise in Grenehurst's patent, 12 H. IV, and in many other places; as Henricus Haydook is called *unus duodecim clericorum de prima forma*, 27 E. III; the which phrase of *prima, secunda and tertia forma* is not newly devised by our English Latinists, but often used in both the codes of Justinian and Theodosius." Hargrave's Law Tracts, p. 296; from tract mentioned further in ch. 34, § 5.

<sup>161</sup> *Id.*, p. 297.

In "orders of the time of Henry V<sup>162</sup> it is made the duty of the registrars to write all the acts of the court, placing the names of the parties and of their attorneys at the head of all acts, as is done in the ecclesiastical courts.<sup>163</sup> They are directed also to enter the dates when all pleadings are exhibited and placed on file." They are styled '*notari sive tabelliones*, and all the terms which are applied to them accord entirely with the ecclesiastical practice."<sup>164</sup>

12. *Jurisdiction of chancery as to uses and trusts.*

What has been observed (in chapter 21, § 13, p 742) of uses and trusts in the reigns of Edw. III and Ric. II may now be further illustrated. Sir *William Blackstone* says:

"The idea being once introduced, however fraudulently, it afterwards continued to be often innocently, and sometimes very laudably, applied to a number of civil purposes; particularly as it removed the restraint of alienations by will, and permitted the owner of lands in his lifetime to make various designations of their profits, as prudence or justice or family convenience might from time to time require. Till, at length, during our long wars in France, and the subsequent civil commotions between the houses of York and Lancaster, uses grew almost universal."<sup>165</sup>

Lord *Coke* speaks of "Hen. IV, in whose days, by reason of the intestine troubles, feoffments to uses did first begin, as some think, or else did first grow common and familiar, as all men must agree."<sup>166</sup> The case in 9 Hen. V of William, lord of Clinton of Say, (mentioned in ch. xxiii, § 9, p. 772,) is cited by Lord Campbell from R. P. 9.<sup>167</sup>

"The intent of the parties was the direction of the uses;" they were only determinable, and to be adjudged by the chancellor, who is judge of equity, and that in chancery which is a court of conscience."<sup>168</sup>

31 Hen. VI. "A man being *cestui que use*, and having an only

<sup>162</sup> Sanders's orders in chancery, 7 c.

<sup>163</sup> Compare Floyer, 143-172.

<sup>164</sup> Langdell's Summary of Eq. Pl., note 1, on p. xxix of Introduction. As to "proceedings in the ecclesiastical court" there may be reference to Reeves's Hist. of Engl. Law, ch. 25, vol. 3, edi. 1869, p. 48, *et seq.*

<sup>165</sup> 2 Bl. Com., 329.

<sup>166</sup> 2 Inst., 252. "Contingent estates in remainder may be limited in possession, *a fortiori* in use." Wray, C. J., in 18 Eliz., *Manning and Andrews*. 1 Leon. 259, 260; citing *Plesington's* case, 6 R. II, and 4 E. VI, *Colthurst's* case.

<sup>167</sup> In Lives of the Chancellors, in note on pp. 8, 9. <sup>168</sup> 1 Rep., 100.

daughter, declared his intent and meaning to the feoffees that after his decease his daughter should have his land. And therefore a question arose in chancery whether he might revoke this limitation of the use made to his daughter; and, in arguing this case, *Fortescue* held that if *cestui que use* hath issue a daughter, and, being such, declares his intent to his feoffee, that his daughter shall have his land after his decease; and after he recovers his health, and hath issue a son, now he said it is good conscience that the son should have the *subpœna*, for he is his heir."<sup>169</sup>

"If I give money to one to purchase lands therewith to him and his heirs, and to permit me to take the profits thereof during my life, and he withholdeth the profits, he shall be compelled by *subpœna*."<sup>170</sup>

In 34 H. VI, in a case in chancery, it was resolved by all the judges of England

"That where the feoffees to use took the profits of the lands and received the rents, and made their executors, and died leaving assets to satisfy all debts over and above the said rents and profits, that the executors should be charged to satisfy *cestui que use* for the said rents and profits."<sup>171</sup>

The following rulings in 5 Edw. IV must have been in the time that *George Nevill* was chancellor.

"As concerning confidence secretly knit to estates, it hath manifold considerations: first, if my feoffee, upon confidence, do infeoff another *bona fide*, that knoweth not of the confidence, I am without remedy." (Fitzherbert Subp. 19.) "But if the second feoffee have notice of the use he shall be compelled here to perform it. 5 Edw. IV, 7."<sup>172</sup>

"If *cestui que use* be attainted of felony, the lord shall not be aided by *subpœna* to have his escheat; and if the heir be barred by the corruption of his blood, then the feoffee, as it seemeth, shall retain the land to his own use. 5 Edw. IV, 7."<sup>173</sup>

"When the use is to the feoffee and his heirs, without any other intent, there *cestui que use* may declare his will thereof, and may vary at his pleasure; but if it be to any intent certain as to take back an

<sup>169</sup> Fitz. Abr., tit. *Subpœna*, 23; Stattham Conscience, 1; Perk. Conv., § 481, p. 92, edi. 1827. Lord Coke notes "the reason of "Fortescue, because he is his heir;" and observes, "There Fortescue said that *conscientia dicitur a con et scio quasi simul scire cum Deo*; that is to say, the will of God as near as reason wills." 1 Rep., 100.

<sup>170</sup> Cary's Rep., 14; citing Crompton, fol. 48 b.

<sup>171</sup> Sir Thomas Egerton, Master of the Rolls in 37 and 38 Eliz., had seen the case. 4 Inst., 87.

<sup>172</sup> Cary's Rep., 13.

<sup>173</sup> Feoffments of use, Brooke, 34; cited in Cary's Rep., pp. 14, 15.

estate tail, or with remainders to others, then he cannot change it for the interest that is in others. 5 Edw. IV, 8 a." <sup>174</sup>

"A man was enfeoffed to the use of a woman sole, which taketh an husband; they both for money sell to B. the land which payeth it to the wife; and she and her husband do pray the feoffee to make estate to B. Afterwards her husband dieth. Now, by the chancellor and all the justices, she shall have aid against the first feoffee by *subpœna* to satisfy her for the land; and if the second feoffee were conusant, a *subpœna* shall be against him for the land; for all that the wife did, during the coverture (as they said), shall be taken to be done for fear of the husband. 7 Edward IV, 14." <sup>175</sup>

It was remarked by Lord *Bacon* <sup>176</sup> and repeated by Lord *Mansfield*, <sup>177</sup> that before the time of Edward IV there are not six cases to be found relating to the doctrine of uses. But it is observed that in or about the reign of Edw. IV, the courts of equity began to reduce uses to something of a regular system. <sup>178</sup>

Although in 7 H. VI the ruling had been as stated below, <sup>179</sup> yet in 5 Edw. IV, where one 'seized of lands on the part of the mother,' 'makes a feoffment in fee to the use of him and his heirs,' it was agreed that "forasmuch as the land and living move from the part of the mother, therefore *in equity* the use, which is nothing but a trust and confidence, should go also to the heir on the part of the mother." <sup>180</sup>

After stating the first case in 5 E. IV, 7, as in this section, on p. 915, Sir George Cary says:

"So if my feoffee die and the land descend to his heir, I have no

<sup>174</sup> Cary's Rep., 15.

<sup>175</sup> Subpœna, Fitzherbert 6, is cited in Cary's Rep., pp. 18, 19. This decision if made after June, 1467, and before March, 1468, was during the chancellorship of Robert Stillington.

<sup>176</sup> On uses, 313; cited in 2 Bl. Com., 329.

<sup>177</sup> In 1759, in *Burgess v. Wheate*, 1 W. Bl., 156. <sup>178</sup> 2 Bl. Com., 329.

<sup>179</sup> "That if a man be seized of land on the part of his mother, and makes a feoffment in fee, reserving rent to him and his heirs, in this case, by the rule of common law (as *Littleton* says), the rent

should go to the heir on the part of the father." 7 H. VI, fol. 4 b; cited in *Shelley's case*, 1 Rep., 100.

<sup>180</sup> 5 Edw. IV, fol. 7 b; cited in *Shelley's case*. 1 Rep., 100 b. The case in 5 E. IV, 7, is mentioned in Br. Abr., tit. *Feoffments al uses*, pl. 34. It is remarked on by Lord *Bacon* in his reading on the Statute of Uses, 79; in 1759 by the Master of the Rolls (Sir *Thomas Clarke*) in *Burgess v. Wheate*, 1 Eden 199, 1 W. Bl., 139, 140; by Lord *Mansfield* in S. C., 1 Eden 219, 1 W. Bl. 157; and by the Lord Keeper, *Henley*, in S. C., 1 Eden, 244, 1 W. Bl., 178.



remedy against him. 8 Edw. IV, 6. All the justices: And this confidence extendeth not only to the taking of the profits, but also that the feoffees shall do acts for the good of the feoffor; and if the feoffor require him to make an estate to any other he ought to do it; but thereof he ought to have request in writing, for he is not to do it upon a bare message or upon desire by word only. 37 Hen. VI, 35, 36. And if the feoffor will have him make an estate to I. for life, the remainder in fee to B., though I will take estate, yet B. shall compel him to make estate to him in the life of I. *Ibid.*, 36. *Finch*. So if the feoffee be disseised, the feoffor shall compel him to sue an assize. 2 Edw. IV, 7."<sup>181</sup>

"Nevertheless those feoffees might grant necessary offices, as stewardships, bailiwicks, &c., though they may not grant annuities to learned men to defend the land. 8 Hen. VII, 12. They may also, as it seemeth, give fees to counsel, and shall have allowance thereof, so far as they are from being maintainors."<sup>182</sup>

On a subsequent page Sir George Cary says:

"It is reported, 8 Edw. IV, 6, and 22 Edw. IV, 6, year book, that the Lord Chancellor and Judges were of opinion that a *subpœna* lieth not against the heir of a feoffee in trust; but our time affordeth that help against executors very commonly."<sup>183</sup>

Lord *Mansfield* says:

"The court first interposed on very narrow grounds: so far as a personal confidence was placed in the trustee they desired him to perform the trust; but the heir of trustee or grantee was not liable (Keilw. 49). *Subpœna* lay only against trustee himself till Hen. VI, and then Fortescue changed it (22 Edw. IV, fol. 6, pl. 18). This was against the heir, but upon a reason which equally holds with respect to the grantee. The chancellor afterwards extended his remedy, unless the alienee purchased for valuable consideration without notice."<sup>184</sup>

Upon the statute of 1 Ric. III (noticed in ch. 27, § 4, p. 859) there are observations in Reeves's Hist. of Eng. Law.<sup>185</sup> The learning of

<sup>181</sup> Cary's Rep., 13, 14.

<sup>182</sup> *Id.*, 14.

<sup>183</sup> "As between *Ouslowe v. Ouslowe*, *Lord Norris v. Lester*, *Culting v. Hackford*," &c. Cary's Rep., 16. For review of causes in the Sixteenth century, see ch. 34, § 16, *et seq.*

<sup>184</sup> In 1759, in *Burgess v. Wheate*, 1 W. Bl., 156, 1 Eden 218, 219. Lord *Mansfield* observes, that "while heir or

alienee were not liable, the plan, though narrow, was consistent, and was adhered to through all its consequences; but when these two exceptions were made, it was absurd not to give remedy in all other cases within the same reason." 1 W. Bl., 156.

<sup>185</sup> *Edi.* 1869, ch. 24, vol. 3, p. 13, and note *b*; p. 14, and note *a*; pp. 16, 17, and note *a*; p. 23 to 25, and note *b*.

uses in the reign of Hen. VII is expounded in the same volume.<sup>186</sup>

13. *Jurisdiction of Chancery to decree specific execution.*

"A. willeth that B. shall sell his land to C.; now C. shall have a *subpœna* against B. to compel him to sell the testator's land unto him. 15 H. VII, 12."<sup>187</sup>

14. *Jurisdiction of Chancery as to charities and frauds.*

The ancient common law rule as to payment of an obligation *without acquittance* is noticed in 5 Rob. Pract., ch. 83, § 2, p. 872 to 874. The effect at common law of a *release by one of two obligees* is mentioned in 7 *Id.*, ch. 30, § 8, p. 520.

11 Edw. IV, 8<sup>a</sup>. "P. was bound in a statute to H. and J., for the behoof of J., and H. released to P.; whereupon she brought a *subpœna* against them both; but P. was discharged, although he knew the confidence, because it is permitted in such a case, a man should help himself to be discharged of his bond; and the *subpœna* stood against H. because he had deceived J." *Tamen quære*; for it is no conscience to be a partaker in fraud."—"And the case precedent liked not the reporter."<sup>188</sup>

22 E. IV, 6. "A man payeth debt upon a single obligation without taking acquittance, therefore this will not discharge him at the common law, but he shall be relieved therein in chancery by the party's oath."<sup>189</sup>

It has been stated from the bench that the court of chancery "determined touching charities and frauds, long before the making of any statute concerning the same."<sup>190</sup>

15. *Whether, notwithstanding stat. 4 Hen. IV (mentioned in ch. 22, § 5), there might not, after judgment at law, be relief in equity under some circumstances; as where the judgment was obtained by fraud.*

3 Hen. V. "R. P. and J. his wife, as in the right of J., cousin and heir of G. N., complain for that Sir T. S., knight, had *by subtle means*, in an assize, recovered against them the manors of West Adderleigh and Sherle in Southampton and Southfield Loveras in the county of Wilts; they therefore pray remedy."

<sup>186</sup> Ch. 27, p. 170 to 176.

<sup>187</sup> Cary's Rep., p. 19.

<sup>188</sup> Cary's Rep., pp. 19, 20. 4 H. VII, 4, is cited in ch. 28, § 7, p. 871.

<sup>189</sup> This may be considered to mean by the oath of a party having knowl-

edge of the facts (for example the obligee); especially as the words 'the party's oath,' are followed by the words 'but not by witness.' *Id.*, p. 2.

<sup>190</sup> Commissioner *Hutchins* in *Hungerford v. Earle*, 2 Vern. 262.

*Resp.* "The plaintiffs shall have remedy by the King and such others as he shall call to him."<sup>191</sup>

3 Hen. VI. "Where John, bishop of Ely, in affidavit against John Baldwin and others, recovered 4,000 acres of marish in Wisbich, it is enacted that the execution of the said recovery should stay unto a certain time."<sup>192</sup>

5 Edw. IV. "A judgment was obtained *by covin* and practice against all equity and conscience in the king's bench; for the plaintiff retained by collusion an attorney for the defendant (without knowledge of the defendant, then being beyond sea), the attorney confesseth the action, whereupon judgment was given; the defendant sought his remedy in parliament, and by authority of parliament power was given to the Lord Chancellor by advice of two of the judges to hear and order the case according to equity."<sup>193</sup>

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The preceding twenty-nine chapters embrace a period included in Sharon Turner's "History of the Anglo-Saxons,"<sup>194</sup> and also that contained in his "History of England during the Middle Ages," to-wit:<sup>195</sup> to the end of the reign of Henry VII. In Mr. Hallam's view of the Middle Ages, his enquiries into the English constitution terminate at an earlier epoch.<sup>196</sup> Mr. Stubbs observes that "with the battle of Bosworth the medieval history of England is understood to end." He adds:

"It is not, however, the distinct end of an old period, so much as the distinct beginning of a new one. The old dividing influences subsist for half a century longer."<sup>197</sup>

This first volume embraces what, according to Mr. Stubbs, is not only "the distinct end of an old period," but likewise "the distinct beginning of a new one"; and also contains the history "for half a century longer."

<sup>191</sup> Cotton's Abr., p. 548, No. 44.

<sup>192</sup> *Id.*, p. 579, No. 22; mentioned more fully in ch. 24, § 4, p. 779.

<sup>193</sup> *Cobbe and Nore*; cited in 3 Inst., 123; S. C. (*Cobb v. More*) cited in Cro. Jac., 344. As to what was thought by common law judges, there may be reference to 1 Campbell's Lives of Chancellors, ch. 23, pp. 397, 398, 2d ed. (1846),

p. 372 of Boston ed. 1874.

<sup>194</sup> From the Earliest Period to the Norman Conquest.

<sup>195</sup> From the Norman Conquest.

<sup>196</sup> Hall. Mid. Ages, ch. 8, part 3, vol. 2, Phila. ed. 1824, p. 223.

<sup>197</sup> 3 Stubbs's Const. Hist., ch. 18, p. 233.

## TITLE VII.

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### INSTITUTIONS OF ENGLAND IN THE REIGNS OF HENRY VIII, AND HIS CHILDREN.

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- CHAP. XXX.—Institutions in the reign of Henry VIII—1509 to 1546-7.  
 XXXI.—Institutions in the reign of Edward VI—1546-7 to 1553.  
 XXXII.—Institutions in the reign of Mary —1553 to 1558.  
 XXXIII.—Institutions in the reign of Elizabeth —1558 to 1603.  
 XXXIV.—Review of the whole period —1509 to 1603.
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## CHAPTER XXX

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### INSTITUTIONS IN THE REIGN OF HENRY VII —1509 TO 1546-7.

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1. *Cf Henry at his accession in April, 1509, his acquaintance with Erasmus through Blount, lord Mountjoy. Of his chancellor, Warham, archbishop of Canterbury; the King's first marriage; and the coronation of him and his first queen.*

In 1509, upon the death of Henry the Seventh (April 22), his son<sup>1</sup> was, in his eighteenth year, King Henry the Eighth. His regard for literature and his desire for intellectual improvement, when he was intended for the church, had not ceased upon his elder brother's

<sup>1</sup> Born June 28, 1491.

death.\* Acquaintance formed by William Blount, lord Mountjoy,<sup>8</sup> had led to Henry's becoming acquainted when a boy with the writings of Erasmus.<sup>4</sup> He was written to by Henry about three months before,<sup>5</sup> and by Mountjoy about a month after Henry's accession. In a letter of May 27 (1509), Mountjoy said to Erasmus of the young king:

"If you could know what a hero he now exhibits himself—how wisely he conducts himself;—what a lover of the good and equitable, and what a regard he has for men of letters, you would fly to him. He desires not gold or gems or the precious metals; but virtue, glory and eternal fame. I said to him the other day when he was wishing that he was more learned, 'We do not desire that of you, sire, but that you should welcome and cherish those who are so; 'and why not' was his reply, 'for without them we shall scarcely exist.'"<sup>6</sup>

The office of Lord Chancellor of England was retained by an ecclesiastic of high character—William Warham, archbishop of Canterbury.<sup>7</sup> At an early period he had scruples as to Henry's marrying his brother's widow; but when the council, after weighing the considerations for and against the marriage, advised for it, the primate, though he did not heartily approve it, performed the ceremony.<sup>8</sup> In June the marriage was at Greenwich;<sup>9</sup> the King and

<sup>4</sup> 1 Turner's Hen. VIII, ed. 1827, ch. 1, p. 11.

<sup>5</sup> Watkins's Biogr. Dict.; cited in ch. 28, § 13, p. 878, 2 Aubrey's Letters, ed. 1813, p. 340 to 344.

<sup>6</sup> In 1522, Erasmus wrote of Henry—

"If he has a style not very different from mine, it is neither surprising nor novel, because, when a boy, he earnestly revolved my lucubrations. Mountjoy, formerly my scholar, and who was then the companion of his studies, prompted him to this." 1 Turner's Hen. VIII, ed. 1827; citing Ep., p. 732.

<sup>7</sup> There was from Richmond, Jan. 17, 1508-9, a letter in Latin, which is preserved in a literal translation. 2 Turner's Hen. VIII, ch. 31, p. 535, note 85; citing Eras. Ep., p. 911.

<sup>8</sup> 1 *Id.*, p. 15, note; citing Eras. Ep.

vi, p. 8, ed. Le Clerc.

<sup>9</sup> 2 Fuller's Worthies, ed. 1840, p. 9; 1 Granger's Biogr. Hist., ed. 3 (1774), p. 94; 6 Collyer's Engl., ch. 2, p. 147; Lodge's Portr., vol. 1, No. 5.

<sup>8</sup> 3 Hume's Engl., ch. 27, p. 78 to 80, N. Y. ed. 1851; 6 Lingard's Engl., ch. 1, p. 1 to 3, Boston ed. 1854.

<sup>9</sup> That the nuptial ceremony was completed on June 3d is stated in 1 Turner's Hen. VIII, ch. 1, p. 21, ed. 1827; and in Lodge's Portr., vol. 1, No. 16. As to the *day* statements vary: it is said by Mackintosh that "Henry and Catharine were finally joined in wedlock on the 6th of June, 1509." 2 Mackintosh's Engl., ed. 1831, p. 98; and by Miss Strickland (according to Bernaldes), that they were wedded at Greenwich "on

Queen were crowned at Westminster on a subsequent day.<sup>10</sup> Mr. Turner observes,

"That a marriage thus celebrated after all the objections against it had been known and considered for eight years—after the King had disclaimed it, and after he had chosen to annul his own disclaimer, when fully able to canvass and judge of its propriety,—should be attacked and broken at a future period by the husband, on any *pretext* of conscience or moral principle, was a circumstance which no reasonable foresight could have predicted, and which kingly and national honor ought to have united to prevent."<sup>11</sup>

2. *Thomas Wolsey, dean of Lincoln, placed in the king's council and granted Nov. 1509, the office of almoner; relieved the king of political labors and was compensated.*

*Thomas Wolsey*<sup>12</sup> had on the accession of Henry VIII, completed

the day of St. Bernardo (June 11)." Queens of Engl., vol. 4, p. 76, Phila. edi. 1857.

<sup>10</sup> June 24, *Id.* p. 76. The festivities were ended by the death (June 29) of Margaret, mother of the seventh, and grandmother of the eighth, King Henry. *Id.*, p. 77. In vol. 1 of Lodge's *Portr.*, No. 3, is an engraving of her by W. H. Mote from the Earl of Derby's collection.

<sup>11</sup> I Turner's *Hen. VIII*, edi. 1827, pp. 21, 22.

<sup>12</sup> He was born in March, 1471, at Ipswich, in Suffolk county, and, "by means of his parents and other his good friends, was maintained at the University of Oxford," where he was made Bachelor of Arts at the age of 15. Soon the boy bachelor became a fellow of Magdalin College and master of the grammar school attached to it. He was bursar of the college in 1498, when the great tower was finished, that goes by his name. His pains and success in the education of a nobleman's son—his agreeable manners and conversational talent—were instrumental in his being instituted in Octo. 1500 to the living of Lymington in Somersetshire. 'The

honesty of his life and manners, and his other laudable merits of probity and virtue,' are motives assigned in the papal bull of 1501, for allowing him to hold more benefices than one, and dispensing with residence. He is represented as very handsome at this time, though afterwards disfigured by a blemish in his right eye; possibly he was "rather too free and easy in his manners and habits." A justice at Lymington, if he erred in setting the priest in the stocks taught him to be more circumspect in his public conduct; he retired from this parish, though he did not resign the preferment till 1509. Meanwhile he became chaplain to *Henry Dene*, Archbishop of Canterbury, when lord keeper of the Great Seal; and on the archbishop's death, in Feb. 1502-3, proceeded to Calais as chaplain to Sir *John Naphant* (or *Nanfan*), the treasurer there; and then perhaps acquired his first insight into State affairs. Sir John promoted his being appointed one of the king's chaplains. Ingratiating himself with *Fox*, bishop of Winchester, holding the office of lord privy seal, and Sir *Thomas Lovel*, treasurer of the household, they recommended him to Hen.

his thirty-eighth year. Soon recommending himself by his wit and gaiety, tempered with discretion, the king availed of his services; appointing him one of his council, and (Nov. 8, 1509) to the office of almoner. He relieved the King of much political labour; and received more than the usual royal compensation.<sup>13</sup>

3. *In 1509, of the counties and boroughs which returned members to Parliament; and the proceedings against Empson and Dudley. Of acts enacted by Parliament in this reign until and including 14 and 15 Hen. VIII (1523). Of these last, ch. 8 allowed clerks of the chancery to marry; and ch. 20 was "The act of attainder of Edward, late Duke of Buckingham."*

There is a list of "counties and boroughs which returned members to Parliament at the time of the accession of King Henry the Eighth," showing then "counties and boroughs 147; number of members 296."<sup>14</sup> And there is a report of proceedings in the year of his accession against Sir Richard Empson and Edmund Dudley, Esq.<sup>15</sup>

There are statutes of the parliament begun at Westminster on Monday, the twenty-first day of January, in 1 Hen. VIII (1509-10).<sup>16</sup> Chapter vi, pp. 3, 4, repeals the statute of 11 Hen. VII, ch. 3 (mentioned in ch. 28, § 11, *ante* p. 874);<sup>17</sup> chapter vii ("an act concerning coroners"); chapter viii ("an act against escheators and commissioners for making false returns of office and commissions"), and chapter x ("that no law shall be made of lands seized unto the King's hands but in certain cases"), are in 1 'Statutes Revised.'<sup>18</sup>

VII on a delicate mission. Its duties were discharged in a way exceedingly satisfactory; and that king made him (Feb. 2, 1509,) dean of Lincoln, to which two prebends were afterwards added. Cavendish in 4 Harl. Miscel., edi. 1809, p. 490 to 493. Foss's Biogr. Jurid.

<sup>13</sup> Presents, gifts and rewards, came in plentifully. Preferment followed. *Id.*

<sup>14</sup> 2 Hatsell's Precedents, edi. 1796, Appendix No. 3, p. 384 to 386.

<sup>15</sup> *Id.*, 3 Fuller's Worthies, edi. 1840, pp. 132, 133; 2 Mackintosh's Engl., Phila. edi. 1831, pp. 98, 99. Lord Her-

bert's Hen. VIII, in 2 Kenn. Compl. Hist., p. 2, is cited in 1 State Tr., p. 284 to 288.

<sup>16</sup> 3 Stat. of the Realm, p. 1 to 22; Paris and Fonblanque's Med. Jurispr., vol. 3, Appendix, p. 3 to 5.

<sup>17</sup> 2 Inst., 51. Connected with ch. 6, pp. 3, 4, is ch. 15, pp. 9, 10, "concerning land made in trust to Empson and Dudley." Ch. 18, pp. 14, 15, is "for confirmation of letters patent made to Queen Katherine for her dower."

<sup>18</sup> Edi. 1870, p. 367 to 371.

Of statutes of the Parliament begun "at Westminster on Wednesday, the fourth day of February," in 3 Hen. VIII (1511-12),<sup>19</sup> chapter x is construed in 10 Jac. I;<sup>20</sup> and ch. xi ("an act concerning physicians and surgeons"), is in 1 'Statutes Revised.'<sup>21</sup> Of statutes made in the session begun "at Westminster by prorogation on the fourth day of November, in the fourth year" of Hen. VIII (1512),<sup>22</sup> ch. 8 (of 'Richard Strode'),<sup>23</sup> and ch. 34, § 2, illustrate the abuse of power in England in the sixteenth century.

There are statutes of the session begun on the twenty-third day of January, and continued until the fourth day of March, in 5 Hen. VIII (1513-14);<sup>24</sup> of the session begun on Monday, the fifth day of February, in 6 Hen. VIII (1514-15);<sup>25</sup> and of the session begun on Monday, the twelfth day of November, and continued until the twenty-second day of December, in 7 Hen. VIII (1515).<sup>26</sup>

Among the statutes of the parliament of 14 and 15 Hen. VIII (1523),<sup>27</sup> are the following:

Ch. v. "An act concerning physicians."<sup>28</sup>

Ch. viii. "An act that the six clerks of the chancery may marry."<sup>29</sup>

Ch. xvii. "The King's general pardon."<sup>30</sup>

Ch. xx. "The act of attainder of Edward, late Duke of Buk."<sup>31</sup>

<sup>19</sup> 3 Stat. of the Realm, p. 23 to 47.

<sup>20</sup> *Robert Scarlet's case*, 12 Rep., 98.

<sup>21</sup> Edi. 1870, pp. 371, 372.

<sup>22</sup> 3 Stat. of the Realm, p. 43 to 91.

<sup>23</sup> 1 'Statutes Revised,' p. 372 to 374.

<sup>24</sup> 3 Stat. of the Realm, p. 92 to 120.

Ch. 6, concerning surgeons, is in Paris and Fonblanque's *Med. Jurispr.*, edi. 1823, vol. 3, Appendix, pp. 5, 6.

<sup>25</sup> 3 Stat. of the Realm, p. 121 to 175. Chapters 4, 6, 15 and 16, are in 1 'Statutes Revised,' edi. 1870, p. 375 to 378.

<sup>26</sup> 3 Stat. of the Realm, p. 176 to 205.

<sup>27</sup> Begun in London on Wednesday, April 15, in 14 Hen. VIII, and afterwards prorogued, continued and adjourned and "holden from Friday, the last day of July, until Thursday, the thirteenth of August," in 15 Hen. VIII, "and then ended and dissolved." 3 Stat. of the

Realm, p. 206 to 281.

<sup>28</sup> *Id.*, pp. 213, 214; 3 Paris and Fonblanque's *Med. Jurispr.*, vol. 3, Appendix, p. 7 to 13.

<sup>29</sup> That J. T., and five others, "now being in the office of the six clerks of the chancery, and every of them, and all other, which in time to come shall be in the same office, and every of them may and do take wives and marry at their liberty, after the laws of Holy church." 3 Stat. of the Realm, p. 216.

<sup>30</sup> *Id.*, p. 242 to 245.

<sup>31</sup> From Lord Herbert's Hen. VIII (in 3 Kenn. Compl. Hist.) is the report of the trial in 1 State Tr., p. 288 to 298. Stowe's *Annals*, p. 512-14, is cited in 1 Turner's Hen. VIII, edi. 1827, pp. 292, 293. Other notices of the Duke, and his trial and death, are in 1 Granger's



Ch. xxi. "The acte of auctorite."<sup>32</sup>4. *Events other than in parliament from 1510 until 22 Dec., 7 Hen. VIII (1515). Especially of the King and Queen; and of Erasmus and Wolsey.*

Of the Queen it is stated that "early in the spring of 1510 she miscarried";<sup>33</sup> that when she was residing at Richmond palace in 2 Hen. VIII, a prince was born on new year's day; that he was named Henry, and died Feb. 22 (1511).<sup>34</sup>

In June, 1513, being the fifth year of Henry's reign, the Queen accompanied the King to Dover; and there was invested with the high trust of Regent when the King and his army took ship (the last day of the month) for France. Her position now during the King's absence was similar to that of Queen Philippa when left regent by Edward III; and she was attentive to her duties. On her way home from Dover she was accompanied by the Earl of Surrey, to whom had been confided the care of the north of England; and she wrote a benevolent and prudent letter touching Francesca de Casseris, her 'woman before she was married.' It was to 'Mr. Almoner' (Wolsey), who accompanied the King on the expedition to France, and was charged with the duty of providing for the army and the voyage. She wrote to 'Master Almoner' other letters, and showed anxiety about her husband: "I pray you take the pains with every of my messengers to write to me of the King's health." (1 Ellis, 80.)

The battle between Earl Surrey and James the Fourth, on Sept. 9, 1513, was 'on the side of an high mountain, called Flodden, on the edge of Cheviot,' and ended in a defeat more calamitous than Scotland had ever lamented before." In that month the Queen wrote to

Biogr. Hist., ed. 3 (1779), pp. 87, 88; 3 Hume's Engl., ch. 28, N. Y. ed. 1850, p. 126; 2 Cunningham's Lives of Eminent Englishmen., ed. 1838, pp. 55, 56. The chapter mentioned in the text (ch. 20) is in 3 Stat. of the Realm, p. 246 to 258. An act concerning the Duchess of Buckingham is in *Id.*, p. 267 to 269. Chapters 23, 24, 25, 26, 27, 30, 31 and

33, as to estate, which was of the Duke of Buckingham, are in *Id.*, p. 269, *et seq.*

<sup>32</sup> *Id.*, p. 259 to 267.

<sup>33</sup> Vol. 1, p. 83, of "Four years at the court of Henry VIII;" cited in 1 Froude's Engl., p. 117, N. Y. ed. 1872.

<sup>34</sup> Miss Strickland's Queens of Engl., vol. 4, p. 78 to 80.

the King from Woburn on the 16th; before the month had ended the King landed privately at Dover and rode post *incognita* to the Queen at Richmond.<sup>35</sup>

Wolsey was appointed bishop of the conquered town of Tournay; he became in the following year (8 Feb., 1514) bishop of Lincoln; and in about six months was translated to the archbishopric of York. For some time he was the principal adviser and mover in all affairs of state; the King's letters to him were in a familiar, confidential style; dignities and preferments were heaped upon him. An annuity of 10,000 ducats was granted to him by the Duke of Milan.<sup>36</sup> This could not have been with intent to make him perform his duty faithfully to the King and people of England.

In 1514 the Queen, in October, accompanied the king's sister Mary to Dover, on her way to marry Louis XII of France. 'After eighty-two days of marriage' that king died; and his widow "stole a match with" (Charles Brandon) "the duke of Suffolk, at Paris, who had been sent by the King" (Henry VIII) "to take care of her and her property."<sup>37</sup>

The Queen was in November again a mother; but the Prince died in a few days.<sup>38</sup>

After stating of Erasmus that "at Rome he was received with great respect and solicited to settle there," Watkins says:

"But having promised to return to England, he declined the offers

<sup>35</sup> Cavendish, 4 Harl. Miscel., pp. 494, 495; Sir H. Ellis's 3d series of Orig. Let., vol. 1, p. 145, and p. 154 to 160; 6 Collyer's Engl., ch. 2, p. 141; 3 Hume's Engl., ch. 27, p. 101, N. Y. ed. 1851; 1 Turner's Hen. VIII, ed. 1827, book 1, ch. 6, p. 138 to 142; and ch. 7, p. 179; Miss Strickland's Queens of Engl., vol. 4, p. 78 to 83, Phila. ed. 1857. As to the body of James IV, there may be reference to Stow's 'Survey of London, 4to, p. 539; and Howitt's Visits, 1st Series, Phila. ed. 1842, p. 168.

<sup>36</sup> Sir H. Ellis's 3d series of Orig. Let-

ters, vol. 1, p. 152 to 171; p. 177 and p. 184; 1 Turner's Hen. VIII, ed. 1827, pp. 179, 180; Foss's Biogr. Jurid.

<sup>37</sup> Miss Strickland's Queens of England, vol. 4, p. 84; 3 Hume's Engl., ch. 27, pp. 104, 105, N. Y. ed. 1851; 6 Lingard's Engl., p. 31, Boston ed. 1854. Of this Duke of Suffolk an engraving by W. H. Mote, from the original in the Duke of Bedford's collection, is in Lodge's Portr., vol. 1, No. 13.

<sup>38</sup> Miss Strickland's Queen's of England, vol. 4, p. 84; Froude's Engl., vol. 1, ch. 2, note 1.

made to him by the pope. *On his arrival in London in 1510, he went to live with Sir Thomas More, at Chelsea, and there wrote his 'Praise of Folly.'* By the interest of Fisher, bishop of Rochester, he obtained the Margaret professorship of divinity at Cambridge, to which was added the Greek lectureship. How long he held these places does not appear; but in 1514 he went to Basil."<sup>39</sup>

Pope Leo X, attentive to the promotion of literature and the arts, wrote to Hen. VIII, in 1515, on July 10:

"We loved our esteemed son Erasmus of Rotterdam, whom we consider to be among the first in knowledge and the arts. He was indeed known to us in friendly intercourse, when we were in a lower condition; but was not only then known but warmly applauded by us from those monuments of genius, which he has committed to writing." The Pope then strongly solicits Henry's favour to him.<sup>40</sup>

In the same year (1515), Sept. 7, Wolsey received from Leo X the Cardinal's hat.<sup>41</sup> Although it has been said, "in 1460," the invention "of engraving superseded the art of illuminating," yet it may be inferred this art was not entirely superseded before the reign of Henry VIII.

"The last specimen of" it "is to be met with at Oxford, in the Lectionary, or Code of Lessons for the year, composed for Cardinal Wolsey."<sup>42</sup>

"In 1515, Wolsey, bearing his honors thick upon him, and bearing too in mind the indignity offered to him by Sir Amias" Pawlet,<sup>43</sup> sent for him to town and commanded him not to quit it till he received further orders. In consequence of this injunction "he lodged 5 or 6 years over the gateway" of the Middle Temple,<sup>44</sup> "and

<sup>39</sup> Biogr. Dict., edi. 1822.

<sup>40</sup> 1 Turner's Hen. VIII, edi. 1827, pp. 30, 31.

<sup>41</sup> Cavendish, 4 Harl. Miscel., pp. 495, 496; Foss's Biogr. Jurid.; Sir H. Ellis's 3d series of Orig. Letters, vol. 1, p. 177. Where it is said, "after much exertion he procured himself to be named a cardinal," is this note, 'He caused the king and the French king to write to Rome for him, and at their request obtained his purpose.' Hall, 581. His title was *Card. Sanctæ Siciliæ de urbe.*'  
1 Turner's Hen. VIII, edi. 1827, p. 182,

and note 47.

<sup>42</sup> Penny Magazine for 1833, Apr. 13, p. 139.

<sup>43</sup> In § 2, p. 922, note, there is a brief allusion to the incident: Sir Amias, about the year 1501, thought fit to put Wolsey, who was then parson of Lymington, in Hampshire, into the stocks. Ireland's Inns of Court, pp. 5, 6, edi. 1800.

<sup>44</sup> Where the Middle Temple gate has since stood, there was formerly a structure, which was erected by Sir Amias Pawlet. *Id.*

to pacify the resentment of his eminence adorned the front with the Cardinal's hat, badges, cognizances and other devices.' <sup>45</sup>

5. Dec. 22, 1515. *The Great Seal surrendered by Archbishop Warham and delivered to Wolsey. In 1518, birth of a Prince who soon died. In 10 Hen. VIII, judgment by the Chancellor on scire facias to revoke letters patent. Of Pope Leo X, King Henry, Martin Luther, Archbishop Warham and Cardinal Wolsey. Of Wolsey's performance of judicial duty; complaint against him, yet the King's favour for him increased. Of his income and expenditure; his reputation as a scholar and encourager of learning; and his aspiring to the popedom.*

Decrease of Warham's and increase of Wolsey's power, and dignities offered to the former by the latter, especially since his acquisition of the archbishopric of York and the cardinalship, had several times induced Warham to tender his resignation.<sup>46</sup> In 7 Hen. VIII (1515), on Dec. 22, in the palace at Westminster, the Great Seal was surrendered by Warham<sup>47</sup> and delivered to Wolsey,<sup>48</sup> whom the King "then and there constituted his chancellor."<sup>49</sup>

In the summer of 1518, a third son of Henry and Katharine was born; but he died immediately.<sup>50</sup> In 1519, was born a natural son of Henry by Lady Talbois.<sup>51</sup>

Upon a *scire facias* in 10 Hen. VIII, to revoke and annul letters patent, judgment was given by Chancellor Wolsey.<sup>52</sup>

<sup>45</sup> *Id.*; citing Hollingshead.

<sup>46</sup> Cavendish, 4 Harl. Miscel., p. 496. Mr. Foss says: Having been obliged to remonstrate with Wolsey for causing his cross to be carried before him in the province of Canterbury, contrary to established practice, the cardinal seemingly submitted, but took steps to obtain from the pope the appointment of legate *à latere*, that he might have a better claim to the disputed right. Biogr. Jurid.

<sup>47</sup> 1 Campbell's Lives of Chancellors, ch. 27, pp. 456, 457, of 2d ed. (1846), pp. 424, 425, of Boston ed. 1874.

<sup>48</sup> "The most reverend father in Christ, Thomas, by divine compassion, cardinal

priest of the holy Roman church, by the title '*Sancti Ariaci in terminis*,' archbishop of York, primate of England, and legate of the apostolic See." *Id.*

<sup>49</sup> On Dec. 24 the chancellor was sworn in by the King at Eltham palace. *Id.*

<sup>50</sup> Miss Strickland's Queens of Engl., vol. 4, Phila. ed. 1857, p. 187.

<sup>51</sup> Fuller's Worthies, ed. 1840, p. 499. Information of him at a later period is *post* in § 18.

<sup>52</sup> "With the advice of the judges and kings, serjeants, &c., that they should be revoked, &c." *Hunt v. Coffin*, 2 Dy., 197 b.

In 1521, letters received by Archbishop Warham from the University of Oxford, caused him to write to Cardinal Wolsey,

"That divers of that University be infected with the heresies of Luther, and of others of that sect, having among them a great number of books of the said perverse doctrine, which were forbidden by your Grace's authority as Legate *de latere* of the See apostolic, and also by me as Chancellor of the said University."<sup>53</sup>

Of the work by Hen. VIII in Latin, entitled *Assertio septem sacramentum adversus Martinum Lutherum*, and dedicated to Leo X, copies were transmitted to Rome, with one of which was this distich:

*"Anglorum Rex Henricus, Leo Decime, mittit  
Hoc opus, et fidei testem et Amicitia."*

In 1521 this copy was, in September, presented by John Clerk to the Pope; in October was issued a bull conferring on Henry the title of defender of the faith; on or about Dec. 1, Leo X died suddenly before distribution of copies sent to him.<sup>54</sup> The new pope was looked to "for the confirmation and exaltation of Henry's book."<sup>55</sup>

At Leo's death, Wolsey (with whom John Clerk was corresponding) had been in the chancellorship nearly six years. In 15 Hen. VIII (1524), Feb. 16, was his "order touching the expenses and demeanour of John; earl of Oxford."<sup>56</sup> As to his manner of performing judicial duty, there are interesting statements.

"When he came to Westminster, he "staid awhile at a bar made for him beneath the Chancery; and there he communed sometimes with the judges, and sometimes with other persons, and then went up to the chancery and sat there till eleven of the clock to hear suits and to determine causes; and from thence he would go into the Star-chamber, as occasion served him; he neither spared high nor low, but did judge every one according to right."

<sup>53</sup> Sir H. Ellis's 3d series of Orig. Let., vol. 1, p. 239 to 247. Letters from Longland, bishop of Lincoln to Wolsey, are in *Id.*, pp. 247, 248, and p. 251 to 254.

<sup>54</sup> Roscoe's Life of Leo X, vol. 4, ch. 19, edi. 1827, pp. 45, 46, and Appendix No. cxc, 11, p. 430; Sir H. Ellis's 3d series of Orig. Let., vol. 1, p. 254 to 271; p. 279 to 281; and p. 314

to 316.

<sup>55</sup> *Id.*, p. 304 to 316.

<sup>56</sup> Orders of High Court of Chancery, by G. W. Sanders, Lond. edi. 1845, part 2, Appendix, p. 1030 to 1032. This order, as to the earl of Oxford, is *not* considered by Mr. Sanders "as illustrative of the *general* jurisdiction of chancery." *Id.*, part 1, p. 8, note.

So Cavendish wrote.<sup>57</sup> Mr. Foss says:

"Notwithstanding the perpetual and varied demands on his time, and the importance of his political duties, his attendance on the court was regular and punctual, and whatever opinion may be formed by different writers of his character as a statesman, his decrees as chancellor are acknowledged to have been equitable and just."<sup>58</sup>

The only proof of his requiring assistance in the court of equity (beyond such as was given by Masters in the regular course of official duty) was shortly before the close of his career, when—the perplexities of the divorce case being added to his other anxieties—there was the special commission of 11 July, 21 H. VIII, mentioned in ch. 34, § 10.

Considering Cavendish's reputation for 'sincere and impartial adherence to truth,' weight should be given to his statement that he never saw this realm in better obedience and quiet than it was in the time of his" (Wolsey's) "authority, nor justice better administered."<sup>59</sup> As to his foibles, Cavendish is not silent.<sup>60</sup> Several chapters<sup>61</sup> shew in Wolsey a fondness for *vain*, a love of *ostentatious*, display, which was attended with large expense.

There was complaint of the manner in which Wolsey used the powers granted him by the pontiff. Being 'charged with employing under him a judge of bad character, who took bribes to stifle exposure, with arrogating an authority in reference to wills and administrations which was beyond his commission, and, what was far worse in the estimation of the bishops and nobles, with innovating on their general patronage,' 'Archbishop Warham was ordered to admonish

<sup>57</sup> Ch. 7, in 4 Harl. Miscel., p. 500.

<sup>58</sup> Biogr. Jurid. Among the "courts referred to by Holinshed" (iii, 615,) were probably (besides the Star-Chamber, in which he usually presided) "the legantine courts which he held under the pope's authority, and other minor courts connected with the various offices he held." *Id.*

<sup>59</sup> Printed in 1641. Reprinted in 4 Harl. Miscel., edi. 1809, p. 489.

<sup>60</sup> Ch. 1, pp. 490, 491, states how, against Sir James Pawlet, displeasure was shewn.

<sup>61</sup> *Id.*, p. 497 to 502. Ch. 5 is "of the orders and offices of his house and chapel;" ch. 6, is "of his second ambassage to the Emperor, Charles the Fifth;" ch. 7, "of the manner of his going to Westminster-Hall;" ch. 8, "of the cardinal's magnificence in his houses."

him.<sup>62</sup> Yet the favour with which *Wolsey* had been regarded by the King before, increased after, he became chancellor.<sup>63</sup> Great reliance was placed on his judgment, and for a considerable period no state transaction of much importance was decided without his advice.<sup>64</sup> His income must have been enormous; it is said to have even exceeded the royal revenue. His expenditure was in a proportionate scale.<sup>65</sup> Homage almost universal prompted him to yet higher aspirations: he aimed at the popedom.

He preserved the reputation of a scholar which he had attained in the commencement of his career; and encouraged learning and learned men. He was long a correspondent of *Erasmus*; and in the University where he was educated, he established and endowed various lectures and otherwise promoted classical studies.<sup>66</sup> In a letter to him "touching the matter of Wilton" and "touching the help of religious houses to the building of your college," is this from the King:

"They say not that all that is ill-gotten is bestowed upon the college, but that the college is the cloak for covering all mischiefs. This grieveth me, I assure you, to hear it spoken of him, which I so entirely love. Wherefore I could do no less than thus friendly to

<sup>62</sup> A letter of remonstrance from the archbishop seems to have been well received by the cardinal; another letter to him from the archbishop is in terms kind, but firm. Orig. Let. (Sir *H. Ellis*), 3d series, vol. 2, p. 41 to 45.

<sup>63</sup> *Id.*, vol. 1, p. 187 to 232; p. 271 to 278; and p. 284 to 286. Foss's Biogr. Jurid.

<sup>64</sup> The multitudinous series of documents, in the 13th and 14th volumes of Rymer's *Fœdera*, give some idea of the variety and extent of his labours. A sense of his importance was shewn not only in complimentary letters, but in pensions from different contending powers in Europe—from the Pope, from Castile, from the Emperor, and from France. Foss's Biogr. Jurid. Sir *H. Ellis*'s 3d series of Orig. Let., vol. 1, p. 184 to 232; p. 287 to 303; p. 316 to 327;

p. 345, to end of the volume; also vol. 2, p. 1 to 71; p. 77 to 86; p. 93 to 109; p. 117, *et seq.*

<sup>65</sup> His houses, especially that at Hampton, were palaces; his domestic establishment was a court, maintained with a brilliancy and order, which few sovereign princes could imitate. The magnificent tapestries, noticed by Mr. *Jesse* in his 'Summer's day at Hampton court' (p. 25), were neither interchanged between Henry the Eighth and Francis the First at the field of Cloth of Gold, nor presented to Wolsey by Charles the Fifth, but ordered by the cardinal of the makers, and paid for like his other furniture. Orig. Let. (Sir *H. Ellis*), 3d series, vol. 1, p. 232 to 238; and pp. 249, 250; Lodge's Portraits, vol. 1, No. 4.

<sup>66</sup> Foss's Biogr. Jurid.

admonish you. One thing more I perceive by your own letter, which a little, methinketh, toucheth conscience; and that is, that you have received money of the exempts for having of their old visitors. Surely this can hardly be with good conscience. *For, and they were good, why should you take money? and if they were ill, it were a sinful act.*"<sup>67</sup>

This view is creditable to the King.

6. *Of Erasmus, after 1516, for ten years or more. Of remarkable treaties for marriage of the Princess Mary, and other proceedings by Wolsey after 1518; some of which may have tended to make the King dissatisfied with him. Of Anne Boleyn; her influence upon the King and against Wolsey. His surrender of the Great Seal Octo. 17, 1529; his death Nov. 29, 1530.*

After mentioning that in 1514, Erasmus went to Basil (or Basle), Watkins says:

*There, "in 1516, he published his edition of the New Testament. He now began to prepare the works of Jerome for the press; the printing of which in 6 volumes, folio, took up ten years. The rise of the Reformation was an interesting period to Erasmus, who by his labours in the restoration of learning, and exposing the corruptions of the church, particularly in his Colloquies, was said to have laid the egg which Luther hatched. Henry VIII invited him to settle in England; but he seems to have been deterred from complying through a fear of Wolsey."*<sup>68</sup>

It is believed that Erasmus was not again in England, though he survived Wolsey's decline, fall and death.

In about two years after the birth of the princess Mary<sup>69</sup> there was a treaty for her marriage to a younger French prince.<sup>70</sup> In July,

<sup>67</sup> 3 Seward's Anecdotes, 93.

<sup>68</sup> Biogr. Dict.

<sup>69</sup> Feb. 18, 1516. Miss Strickland's Queens of England, vol. 4, p. 85.

<sup>70</sup> 6 Collyer's Engl., ch. 2, p. 149. Francis desiring repossession of Tournay, gave his instructions of April, 1518, to his secretary to open a conditional treaty with Wolsey, that if the French Queen should be delivered of a son, he should be married to Mary, then but two years old. In July, the son having ap-

peared, there was a treaty for marriage between the two babies, and for giving up Tournay to Francis on the day of the nuptial celebration on his paying 600,000 crowns of gold. Mr. Turner says: "At the end of the month he granted Wolsey a pension of 20,000 livres Tournois; and before the close of the year obtained the immediate cession of the town without waiting the term of the stipulated marriage." 1 Turner's Hen. VIII, edi. 1827, pp. 201, 202.



1520, Charles V, in conferences with Henry, endeavoured to break this match.<sup>71</sup>

In that year (1520) in the latter part of May there were visits of sovereigns. Charles "so timed his visit as to reach England a week before" Henry was to see Francis.

From Dover, Henry and Charles "rode together to Canterbury, where, amid festive entertainments, for four days, Charles made those arrangements for his political interests for which he had come. On 31st May he went to Sandwich and embarked for Flanders, while Henry proceeded to Dover to be at Calais and Guisnes by the stipulated time."<sup>72</sup>

Mr. Turner gives a narrative of the meeting between Henry and Francis; of the protracted festivities near Guisnes; and of the sovereigns separating on June 24, "after exchanging princely presents."<sup>73</sup>

"Henry went to Calais; but on the 10th July proceeded to Grave-lines to meet the emperor."—"Charles returned with the English king to Calais and remained four days transacting that business with Wolsey for which he had undertaken the journey."<sup>74</sup>

Several of Mr. Turner's chapters<sup>75</sup> illustrate the then state of things. Wolsey, Lord Chancellor of England, Archbishop of York, and as Henry's prime minister in his trust and confidence, had acquired habits of extravagance and waste which were constantly consuming a great deal of money and calling for more; and one of

<sup>71</sup> *Id.*, p. 255.

<sup>72</sup> I Turner's Hen. VIII, edi. 1827, p. 241 to 245.

<sup>73</sup> *Id.*, p. 245 to 252.

<sup>74</sup> *Id.*, p. 252.

<sup>75</sup> Ch. 10. "War between France and the Emperor; Wolsey's double negotiations; Henry allies with Charles against Francis; English invasion of France in 1522." *Id.*, p. 255 to 296.

Ch. 11. "The rebellion of the Duke of Bourbon; his conspiracy with England and the Emperor; the coöperating invasion of France by the English army in 1523." *Id.*, p. 297 to 332.

Ch. 12. "Continuation of the war with France in 1524, expulsion of the

French from Italy; Bourbon renews his engagement to make Henry King of France; invades it for that purpose, and besieges Marseilles." *Id.* p. 333 to 371.

Ch. 13. "Francis enters Italy, besieges Pavia, and sends the Duke of Albany towards Naples; conferences of English ambassadors with the Pope; Bourbon attacks the camp of the French King; the deciding battle of Pavia." *Id.*, p. 372 to 419.

Ch. 14. "Bourbon's proposals to Henry; schemes of the Italian powers against the Emperor; commotions in England; Wolsey's secret intercourse with France; conferences of the English ambassadors with the Pope; French King's proposals; his removal to Spain." *Id.*, p. 420.

his discreditable modes of obtaining money, was in "receiving gratuitous gifts and annuities from foreign powers,"<sup>76</sup> which, besides being in conflict with the faithful discharge of his duties as chancellor and prime minister, tended to produce double-dealing as to foreign powers; for the varying amounts of their respective largesses, and the influence which they might respectively exert to promote a scheme for his own aggrandizement, might naturally cause such a bias on his part that, as between them, it would be not always in favour of the same one, but sometimes in favour of one and other times in favour of another of them.<sup>77</sup>

Though strange, it is true that for marriage between Charles V, born Feb. 24, 1500, and his cousin Mary, born Feb. 18, 1516, there was a scheme when she was a child of but four or five years.<sup>78</sup> Admitting that Charles's visit to England in 1520, surprised the nation, Robertson says:

"Wolsey, however, was well acquainted with the emperor's intention. A negotiation, unknown to the historians of that age, had been carried on between him and the court of Spain; this visit had been concerted; and *Charles granted the cardinal, whom he calls his most dear friend, an additional pension of seven thousand ducats.*"

Charles stayed only four days in England.

"But during that short space he had the address, not only to give Henry favorable impressions of his character and intentions, but to detach Wolsey entirely from the interest of the French king."<sup>79</sup>

In 1521 Wolsey made an excursion to Bruges to meet Charles; and a league was concluded;<sup>80</sup> on August 25, (1521), there were articles between the emperor and Mary's father, stipulating that they

<sup>76</sup> I Turner's Hen. VIII, ed. 1827, p. 236. Instances of insidious bounties are specified in *Id.*, p. 237 to 240.

<sup>77</sup> In 1519 Charles was elected Emperor. *Id.*, p. 209. Before this election declarations of attachment from Wolsey to Charles produced the suggestion of the papacy for Wolsey. *Id.*, p. 207, and p. 211. Thenceforth he acted to secure it. *Id.*, p. 210. In 1521,

when Pope Leo died, a letter of Dec. 28 (from Ghent) apprised Wolsey that Charles had written to Rome on Wolsey's behalf. Henry was also in his favour. But Adrian was elected Jan. 9, 1522. *Id.*, p. 213 to 218.

<sup>78</sup> *Id.*, p. 260, and p. 264.

<sup>79</sup> I Robertson's Charles V, p. 520, Boston ed. 1857.

<sup>80</sup> *Id.*, p. 598.

should unite against Francis; and that 'notwithstanding the spousals between the dauphin and Mary' she should now be married to the emperor, for which, being cousins, a dispensation should be obtained;<sup>81</sup> and containing the following provision (which, it is said, was inserted to gratify the pope):

"That all and each in their dominions who *seem* to think badly on the catholic faith, or to endeavour to disturb that catholic faith, or the apostolic seat, and presume to hurt its dignity, authority and power, both princes shall wholly coerce with due remedies and 'distringant' upon them, all the force in their power, and pursue them, and endeavour to avenge all the injuries touching the christian religion, which these shall bring upon the seat of Christ, as if they were done to themselves."<sup>82</sup>

This was contemporaneous with "the deliverance mentioned in § 5, p. 929, of Henry's "book against Luther to the pope's holiness":<sup>83</sup> of which a good deal is said,<sup>84</sup> and for which (as stated on p. 929), the pope conferred on Henry the title of *Defender of the faith*.<sup>85</sup> For some time the treaty of August 1521, was kept secret; in 1522 there was "the unexpected arrival of an English herald, who, in the name of his sovereign, declared war in form against France."<sup>86</sup> Charles, on his way to Spain, visited England.

"By his artful address, during a residence of six weeks in England, he gained not only the King and the minister, but the nation itself."<sup>87</sup>

There was a great change in 1523, when Pope Adrian died and the Cardinal de Medici "was raised to the head of the church and assumed the government of it by the name of Clement VII."

<sup>81</sup> 1 Turner's Hen. VIII, edi. 1827, p. 278; 6 Collyer's Engl., ch. 2, p. 160 to 163; 3 Hume's Engl., ch. 28, p. 126.

<sup>82</sup> 1 Turner's Hen. VIII, edi. 1827, p. 278.

<sup>83</sup> *Id.*, p. 279; citing Wolsey's letter to Henry of Aug. 24, 1521.

<sup>84</sup> Robertson's Charles V, p. 583, Boston edi. 1857.

<sup>85</sup> *Id.*, p. 584.

<sup>86</sup> *Id.*, p. 613.

<sup>87</sup> "The cardinal" foresaw, "from

Adrian's age and infirmities, a sudden vacancy in the papal See;"—"and as Charles, besides augmenting the pensions which he had already settled on him, renewed his promise of favoring his pretensions to the papacy with all his interest, he endeavoured to merit the former and to secure the accomplishment of the latter by fresh services." *Id.*, p. 619. Charles arrived in Spain June 17, 1522. 2 *Id.*, p. 3.

"This second proof fully convinced Wolsey of the emperor's insincerity, and it excited in him all the resentment which a haughty mind feels on being at once disappointed and deceived."<sup>88</sup>

If revenge was meditated, his intention was concealed and the execution of it suspended until after the route at Pavia (Feb. 24, 1525), when Francis I was made a prisoner and sent to his mother a letter containing the words, 'Madam, all is lost, except our honour.'<sup>89</sup> Now "the passions of the English minister seconded the inclinations of the monarch."<sup>90</sup>

"But Henry's connections with the emperor made it necessary to act in such a manner as to save appearances."<sup>91</sup>

In June (1525) messengers who delivered the king's and cardinal's letters to the emperor, were surprised to hear his angry censure on Wolsey.<sup>92</sup>

Henry, after offering to send the princess Mary into Spain or the Low Countries, that she might be educated under the emperor's direction,<sup>93</sup> and receiving a reply from him, signed on July 6 a commission which, after mentioning Charles's contract to marry that princess, recited as follows :

"That Henry's ambassadors had congratulated Charles on his victory ; that it had been stated on the emperor's part, how his subjects, seeing his mature and fit age for marrying, had vehemently desired, and did not cease to urge him to it, and to choose elsewhere a marriageable wife of full age, which 'our daughter would not be for some years yet': therefore, Charles being desirous to comply with their wishes, the king empowered his ambassadors to retract, rescind, annul and annihilate the contract."<sup>94</sup>

The pope learnt so early as July 25 (through a letter from Wolsey, to the bishop of Bath), of Charles's inclination to have peace with France.<sup>95</sup> By Wolsey's management the commission of July 6, for which Charles (in contemplation of marriage with Isabella, princess of Portugal) had been urgent, and which Henry supposed had been

<sup>88</sup> *Id.*, p. 56.

<sup>89</sup> *Id.*, p. 94.

<sup>93</sup> 2 Robertson's Charles V, Boston edi.

<sup>90</sup> *Id.*, p. 96.

1857, p. 97.

<sup>91</sup> *Id.*, p. 97 ; 1 Turner's Hen. VIII, edi. 1827, p. 428.

<sup>94</sup> 1 Turner's Hen. VIII, edi. 1827,

p. 452.

<sup>92</sup> *Id.*, p. 449 to 451.

<sup>95</sup> *Id.*, p. 451.

duly received and acted upon, did not reach the commissioners till Sept. 15; being a fortnight after Wolsey had persuaded Henry to make a separate peace with France.<sup>96</sup>

In 1526, in March, Francis entered his own dominions again.<sup>97</sup> He acknowledged that "next to God," his "liberty was *only wrought* by the king of England."<sup>98</sup> From Bayonne he wrote to that king thanking him for his zeal and affection, to which he acknowledged that he owed the recovery of his liberty.<sup>99</sup>

In the memorable incidents of 1527, Wolsey's politics did not elevate the character of his government.<sup>100</sup> Soon after March 7,<sup>101</sup> it appeared that the emperor relied upon Wolsey's services, and offered besides paying him arrears of pension, some "ducats more"; Wolsey helping the emperor to get a large sum "paid out of the French king's money."<sup>102</sup>

<sup>96</sup> *Id.*, p. 452 to 454, and p. 457 to 459; 6 Collyer's Engl., p. 181; 3 Hume's Engl., ch. 28, p. 152.

<sup>97</sup> 2 Turner's Hen. VIII, edi. 1827, pp. 4, 5.

<sup>98</sup> *Id.*, p. 6, note 22; 2 Robertson's Charles V, Boston edi. 1857, p. 104; *Id.*, p. 113 to 117. The treaty which procured Francis his liberty was signed at Madrid on Jan. 14, 1526. *Id.*, p. 117. When he arrived at the river Andaye, an empty bark was moored in the middle of the stream; "Lannoy, with eight gentlemen, put off from the Spanish and Lautrec, with the same number from the French side of the river; the former had the King in his boat; the latter the dauphin and Duke of Orleans; they met in the empty vessel; the exchange was made in a moment; Francis, after a short embrace of his children, leaped into Lautrec's boat, and reached the French shore. He mounted at that instant a Turkish horse, waived his hand over his head, and with a joyful voice, crying aloud several times, 'I am yet a King!' galloped full speed to St. John de Luz, and from thence to Bayonne."

This was on March 18, a year and 22 days after the battle of Pavia." *Id.*, pp. 121, 122.

<sup>99</sup> *Id.*, p. 134. There is mention of the demand next day by the Emperor's ambassadors and the reply of Francis. *Id.*, pp. 134, 135;—mention of what was done when Lannoy and Alarcon, as ambassadors, repaired to the court of France. *Id.*, pp. 139, 140.

<sup>100</sup> 2 Turner's Engl., edi. 1827, pp. 36, 37, *et seq.*; 2 Turner's Hen. VIII, edi. 1827, p. 7 to 17.

<sup>101</sup> Date of letter from Dr. Lee to Wolsey. *Id.*, p. 38, note 22.

<sup>102</sup> 2 Turner's Hen. VIII, edi. 1827, p. 41 to 43. "The English envoy's economy, the effect of the bribe, and the imperial secretary's *discrimination* and *delicacy* are thus" described by Dr. Lee: 'Whereas your grace, in your letters offereth him for attaining of the arrears 1,000 ducats thereof, above the yearly pension of 1,000 ducats; I have offered him nothing thereof. I think if your grace gave him less, the thing succeeding to your expectation, he will be well content; for that pension is a fair thing, and

On May 6 (1527), the Duke of Bourbon was leading his troops to the walls of Rome, when he fell.<sup>103</sup> Though he was killed, yet his troops rushed on the walls, entered the city, pillaged it and besieged the pope.<sup>104</sup>

"The pope, seeing no effectual succor likely to arrive, on the 6th June concluded his arrangements with the imperial forces, and surrendered his protecting castle to their power."—"On the same day he wrote to Wolsey a letter of complaint on his calamitous situation,"<sup>105</sup> "declaring that his only hope and comfort lay in the cardinal's influence with Henry, and in Henry's piety towards him."<sup>106</sup>

"Wolsey, assuming the aspect of devout horror, ordered prayers in every parish church, and fasting for three days, for the deliverance of the pope."—He "made a formal speech to the king to excite him to arms in the pope's behalf."<sup>107</sup>

"Six days only before Bourbon assaulted Rome, the English government" had "signed a treaty" "binding itself to unite with Francis in demanding his two sons from the emperor for the ransom of two millions of crowns of gold; and, in case Charles should refuse this offer, to make war upon him, in conjunction with the French king, in the ensuing July."<sup>108</sup>

This treaty roused indignation; even before the hasty engagement of May 29.<sup>109</sup>

"But Henry had now become alarmed at the emperor's predominating power, and interested for the lamenting, soliciting and humble pontiff. On 18th June a power was granted to Wolsey to proceed to France on a special embassy;"—"and Sir Francis Poyntz was sent

so he taketh it. *Ever since the overture thereof, I have found him another man.* He hath now in reckoning allowed himself the 2,000 ducats behind for Christmas in 1526, and midsummer in same. He said to me, altho' he would not take it *as pension*, wherein he must have the Emperor's leave; yet, he refused not to take it as of *your grace's reward*." *Id.*, p. 43, note 44.

<sup>103</sup> The shot may have been from a musket aimed at him by Benvenuto Cellini. *Memoir of Cellini*, Lond. ed. 1850, ch. 7, pp. 76, 77. But 'who killed Bourbon' remains uncertain. 2 Turner's Hen. VIII, ed. 1827, p. 88, note 82, and pp. 543, 544, *note*.

<sup>104</sup> *Id.*, p. 88 to 96.

<sup>105</sup> *Id.*, p. 102. It is mentioned as remarkable, that one of the soldiers, "under the Duke of Bourbon, at the sacking of Rome," was "Cromwell, who succeeded Wolsey as Henry's chief minister." *Id.*, p. 102.

<sup>106</sup> *Id.*, p. 104.

<sup>107</sup> *Id.*, pp. 103, 104.

<sup>108</sup> *Id.*, p. 111; referring to the treaty in Rymer, Fed. V, 14, p. 218.

<sup>109</sup> "By which Francis was to march immediately into Italy with 30,000 men, and the English army at the same time invade the Emperor's Low Countries." 2 Turner's Hen. VIII, ed. 1827, p. 113.

as a new ambassador to Charles to coöperate with the bishop of Tarbes from France."<sup>110</sup>

It was some time before "correct news of the events at Rome" in May was "known in Spain" or to the Emperor.

"On the 25th of June the full detail having been communicated, Charles sent for the English ambassadors, and made to them a solemn disavowal of his own participation in what had taken place. He lamented the military excesses, but took care to imply a greater regret for the disrespect shewn to the pontiff."<sup>111</sup>

While Francis was a prisoner, marriage was contemplated between him and Charles's sister Eleanora, queen dowager of Portugal.<sup>112</sup>

In 1526 "the English minister" at Paris was instructed to ascertain from the lady regent the real intentions of Francis on this subject. He questioned her accordingly. She declared her son's preference for Mary;"—but she perplexed him by desiring his advice." He said that he "did not doubt but she knew the qualities of the daughter of England well enough, and the difference between her and madam Eleanora;" and he also said he "knew well it was the thing that the king's highness most desired of anything on earth, that this marriage should pass between her son and my lady the princess."—"She thought the second son Henry, duke of Orleans, would be the best person, because England would want a ruler for itself, and residing within it, and therefore the dauphin would not be meet."<sup>113</sup>

The papal minister Gambero wrote Jan. 18, 1526-7, to Wolsey, 'I urged the nuncio in France that with every possible exertion he should exhort his Christian majesty to make a marriage with Henry's daughter.' In a letter from the nuncio afterwards, it is said:

"His majesty" sent a gentleman of his chamber to procure a picture of her, and within a few days will cause two ambassadors to go to the king of England on this business. These will be the bishop of Tarbes and the president of the parliament of Thoulouse."

March 2 the bishop of Tarbes arrived in London. Francis having

<sup>110</sup> *Id.*, p. 115.

<sup>111</sup> *Id.*, pp. 119, 120.

<sup>112</sup> I Robertson's Charles V, edi. 1857, p. 114 to 120.

<sup>113</sup> 2 Turner's Hen. VIII, edi. 1827,

pp. 24, 25. Afterwards Sir William Fitzwilliam arrived from England with new directions to press the marriage with Mary." *Id.*, p. 28; referring to letter of Dec. 22.

an eye on Eleanora, the conclusion was that either he or his second son Henry should become Mary's husband.<sup>114</sup>

Meanwhile the marital relations of Mary's father and his "scruples of conscience" were receiving attention.<sup>115</sup> A philosopher has suggested

That "the light which shone from Anne Boleyn's eyes might have awakened or revived Henry's doubts of the legitimacy of his long union with the faithful and blameless Catharine."<sup>116</sup>

It is proper then to notice the "date of the commencement of Henry's regard for this interesting young woman."<sup>117</sup>

Anne was of an ancient family.<sup>118</sup> Sir Geoffrey Boleyn's grandson, Thomas, married a daughter of the duke of Norfolk.<sup>119</sup> Of her daughters, Anne was younger than Mary.<sup>120</sup> The most authentic accounts of Anne's birth, place it in 1507.<sup>121</sup> After her mother's death (in 1512)<sup>122</sup> Anne resided at Hever castle<sup>123</sup> under the superintendence of a French governess and other instructors. To her father, when

<sup>114</sup> Cavendish, ch. 13, and ch. 14, in Harl. Miscel., p. 510 to 525; 6 Collyer's Engl., pp. 187, 188; 3 Hume's Engl., pp. 159, 160; 6 Lingard's Engl., ch. 3, p. 117. The text accords with 2 Turner's Hen. VIII, edi. 1827, p. 56 to 58.

<sup>115</sup> In 1524, "Cardinal Wolsey, by his legantine mandate, published a bull of the Pope's against those that contracted marriage within the forbidden degrees." 1 Harl. Miscel., edi. 1808, p. 183. Simon Grineus says, in a letter of Sept. 10, 1531, "The King had declared to him that he had abstained from Queen Catharine for seven years" upon scruples of conscience." *Id.*, p. 184.

<sup>116</sup> 2 Mackintosh's Engl., Phila. edi. 1831, p. 130. It was a misfortune—but not Catharine's fault—that her health was delicate—her spirits lost their buoyancy—and "her existence was in a very precarious state from 1523 to 1526." Miss Strickland's Queens of Engl., Phila. edi. 1857, vol. 4, p. 95.

<sup>117</sup> 2 Turner's Hen. VIII, edi. 1827,

p. 194.

<sup>118</sup> *Id.*, ch. 21, pp. 161, 162.

<sup>119</sup> Sir H. Ellis's 3d series of Orig. Let., vol. 3, p. 21 to 23; Miss Strickland's Queens of Engl., vol. 4, pp. 123, 124.

<sup>120</sup> One of the Queen's maids of honour. The Queen, noticing the King's admiration for her, conversed with her on the subject; she (Mary) on Jan. 31, 1521, married her lover, William Carey. *Id.*, pp. 93, 94, and p. 180; 6 Lingard's Engl., ch. 3, p. 110, *note*.

<sup>121</sup> 1 Turner's Hen. VIII, edi. 1827, pp. 182, 183; Green's Hist. of Engl. Peop., book 5, ch. 3, vol. 2, p. 133.

<sup>122</sup> Miss Strickland's Queens of Engl., vol. 4, p. 125. She was buried at Lambeth church, in the chapel of her kindred, the Howards. *Ibid.*

<sup>123</sup> In Kent county. Hever is 29 miles from London, and 7 from each of three other places, to wit: Tunbury, Westerham, and Seven Oaks.



he was away from home, she wrote in English and in French. When he expressed a desire for her to appear at court, and told her that the Queen would condescend to converse with her, she replied: "At this I rejoice, as I do, to think that conversing with so sensible and elegant a princess will make me even more desirous of continuing to speak and to write good French." Anne, as the fourth of the maids of honour to the king's sister, Mary, had a place near the person of the royal bride at the grand ceremonial (August 13, 1514,) upon the occasion of the espousal of that princess to Louis XII of France in the church of the Grey Friars, Greenwich. Anne was in attendance upon her to and at Dover; and at the embarkation was encouraged by the presence of her father, her grandfather (the duke of Norfolk) and her uncle (the earl of Surrey), who were associated in the honour of delivering the princess to the King of France. On Octo. 9 Anne was an assistant at the nuptials solemnized in the church of Abbeville. Next day she and two other ladies were the only exceptions to the general order of the King for the dismissal and return to England of all the Queen's attendants. After the death of Louis XII Anne did not return to England with Queen Mary, but entered the service of Queen Claude, (daughter of Louis, and first consort of Francis I,) an amiable and excellent woman; and subsequently exchanged that service for the household of Margaret (sister of Francis I), who was duchess of Alencon, and afterwards queen of Navarre. Anne's return to England is mentioned by some as in 1522,<sup>124</sup> but Mr. Turner places it in 1527, and says, "there is not the least evidence that she came to it earlier."<sup>125</sup>

"The first time Henry saw her, after her return to England, was in her father's garden at Hever, where it is said he encountered her by accident, and admiring her beauty and graceful demeanour, he

<sup>124</sup> 6 Lingard's Engl., ch. 3, pp. 111, 112, and notes; Miss Strickland's Queens of Engl., vol. 4, p. 125 to 132; p. 138 and p. 215.

<sup>125</sup> 2 Turner's Hen. VIII, edi. 1827, p. 185. Mr. Turner says that Claude died July 20, 1524; that on her death Margaret, Duchess of Alencon, took

Anne<sup>J</sup> into her family; that the duchess became a widow in the spring of 1525, and married the King of Navarre Jan. 24, 1527; and he supposes that this incident, taking her from Paris, may have been the occasion of Sir Thomas Boleyn calling his daughter into England. *Id.*, pp. 184, 185.

entered into conversation with her, when he was so much charmed with her sprightly wit that on his return to Westminster he told Wolsey 'that he had been discoursing with a young lady who had the wit of an angel and was worthy of a crown.'<sup>126</sup>

Wolsey is said to have been "the first person who suggested Anne Boleyn's appointment as maid of honour to the Queen."<sup>127</sup> The King "soon became secretly enamoured of her."<sup>128</sup>

To adjust a dispute between Sir Thomas Boleyn and Sir Piers Butler, there had been contemplated a matrimonial alliance between a daughter of Sir Thomas and the heir of his opponent; but Anne's affection was not for such alliance. The earl of Northumberland had, while his eldest son, Henry, lord Percy, was yet a boy, destined him for a daughter of the earl of Shrewsbury; but to this Henry Percy exhibited great reluctance. There has been a belief that Anne became the object of his exclusive attention; that between them there was a strong attachment, and perhaps a mutual promise of marriage; and that he was the only man whom she ever loved. King Henry's selfishness led him to charge Wolsey to take steps for a separation of these lovers; such steps were taken and they were countenanced by the father of Henry Percy to the great dissatisfaction of him and Anne. He was banished the court, commanded to avoid Anne's company and compelled to marry Lord Shrewsbury's daughter, Lady Mary Talbot. It has been supposed that this marriage was definitely concluded upon September 12, 1523; that it took place soon afterwards; and that Anne was then discharged from the Queen's service.<sup>129</sup>

Such a supposition is inconsistent with the fact that Anne was in France with Queen Claude, who did not die till January 30, 1524. Mr. Turner, referring to Cavendish's account of Wolsey's interview with Percy and his father,<sup>130</sup> says: "This interview fixes the beginning of Henry's regard for Anne to have been before the middle of May, 1527"; and "there is no evidence that it preceded the spring of

<sup>126</sup> Miss Strickland's *Queens of Engl.*, vol. 4, p. 132.

<sup>127</sup> *Id.*, 132.

<sup>128</sup> *Id.*, 134.

<sup>129</sup> *Id.*, p. 132 to 138; Cavendish,

ch. 9, 4 Harl. Miscel., pp. 503 to 505;

6 Lingard's *Engl.*, ch. 3, pp. 112, 113.

<sup>130</sup> Ch. 9, 4 Harl. Miscel., ed. 1809, p. 503 to 505.

1527." Admitting, according to Cavendish, that Anne "was for a time discharged the court and sent home to her father," Mr. Turner considers this was in the spring of 1527.<sup>181</sup>

Henry Percy "succeeded to the earldom of Northumberland on the death of his father, 1526-7."<sup>182</sup> Anne's father had been raised in rank and office.<sup>183</sup> There is reason to think that "Anne would rather have been Percy's countess than Henry's queen."<sup>184</sup>

It is interesting to read particulars of Anne's dignified answer to the first solicitations of the 'most mighty king.'<sup>185</sup>

"In whatever expressions this accomplished lady conveyed her resolution, the fact is admitted by all that she resisted the king's importunities and by this conduct raised herself immediately to a distinction amid the higher titled females of his court."<sup>186</sup>

The King paid an unexpected visit to Hever castle, where Anne was residing with her father and step-mother. But Anne "took to her chamber, under pretence of indisposition, on Henry's arrival at the castle and never left it till after his departure."<sup>187</sup> It may be inferred that afterwards there was explanation.

"The Boleyns made" Hever "their principal residence; and it was here that the" king, "during the halcyon days of courtship, is said to have spent some of his happiest days. Tradition states that on his visits to the castle he would wind his buglehorn as soon as he came within sight of its towers, in order to announce his approach."<sup>188</sup>

It is said the King's affection for Anne was 'long concealed.'<sup>189</sup> But, in 1527, when he gave to the French ambassadors a magnificent

<sup>181</sup> 2 Turner's Hen. VIII, edi. 1827.

<sup>182</sup> Miss Strickland's Queens of England, vol. 4, p. 138.

<sup>183</sup> Miss Strickland mentions that on June 18, 1525, the King advanced Anne's father to the peerage by the style and title of the viscount Rockford," and bestowed on him the high office of treasurer of the royal household; and appointed William Carey, the husband of Mary Boleyn, a gentleman of the privy chamber." *Id.*, pp. 138, 139.

<sup>184</sup> *Id.*, p. 140.

<sup>185</sup> (From Sloan MS., No. 2495,) 2 Turner's Hen. VIII, edi. 1827, ch. 21, pp. 195, 196; Miss Strickland's Queens of Engl., vol. 4, p. 139.

<sup>186</sup> 2 Turner's Hen. VIII, edi. 1827, p. 196.

<sup>187</sup> 6 Lingard's Engl., ch. 3, p. 113; Miss Strickland's Queens of Engl., vol. 4, pp. 138, 139.

<sup>188</sup> 5 Dugdale's Engl. and Wales, p. 960, tit. *Hever*.

<sup>189</sup> Miss Strickland's Queens of England, vol. 4, p. 150.

entertainment at Greenwich (4 Harl. Miscel. 524), and in the evening there was dancing, "Henry's partner was Anne Boleyn." Whether this was on May 5,<sup>140</sup> or not till after Octo. 20, may admit of question.

The instructions of March, 1526, drawn by Wolsey, and signed by Henry, contain directions to the ambassadors (Sir Thomas Cheyney and others) to "deliver the *king's letters* unto the duchess of Alencon, making his grace's hearty recommendations.<sup>141</sup> Sir Thomas Boleyn, on his return to England with his daughter Anne, early, in 1527, brought with him the portrait of this widowed duchess for the King's consideration.<sup>142</sup> It was supposed in England, in 1527, that Wolsey was negotiating for marriage of the King with a lady of the French court—the duchess of Alencon or Rhené, sister of the deceased queen Claude;<sup>143</sup> and was corresponding with those whom the King had sent to the pope to represent the "condition of himself, his issue and kingdom, and to solicit the pope for a license to marry.<sup>144</sup> In July, perhaps in June (1527), matters between the King and Queen<sup>145</sup> were such as made her seek counsel from a friend.<sup>146</sup> It was indeed in that summer said by, or for, the King, that he "hath nothing intended nor done, but *only* for the searching and trying out the truth."<sup>147</sup> But this did not prevent it being "generally reported in the metropolis that the queen was to be divorced, and that "Wolsey was going to the continent to concert a marriage between Henry and" a lady in France.<sup>148</sup>

"State Papers, Hen. VIII," contain letters from Wolsey to the

<sup>140</sup> *Id.*, p. 142; 6 Lingard's Engl., ch. 3, p. 118; 2 Mackintosh's Engl., p. 131.

<sup>141</sup> 2 Turner's Henry VIII, edi. 1827, ch. 16, p. 10, and ch. 20, p. 134.

<sup>142</sup> Miss Strickland's Queens of Engl., vol. 4, p. 141; citing Stowe.

<sup>143</sup> 2 Turner's Hen. VIII, p. 133 to 140; Miss Strickland's Queens of Engl., vol. 4, p. 142.

<sup>144</sup> 1 State Tr., p. 301.

<sup>145</sup> 1 Harl. Miscel., p. 184; 4 *Id.*, 530; 6 Lingard's Engl., ch. 3, p. 118, and note on p. 130.

<sup>146</sup> 2 Mackintosh's Engl., p. 304;

citing State Papers Hen. VIII, vol. 1, p. 198.

<sup>147</sup> 6 Lingard's Engl., ch. 3, pp. 120, 121; Miss Strickland's Queens of Engl., vol. 4, p. 97; 2 Mackintosh's Engl., p. 302 to 305; citing State Papers Hen. VIII, vol. 1, p. 194 to 198. Mr. Turner says: "That he entered into the question only to learn the truth is a fact, which the evidence supports; but his wish for its ending in a divorce became, in time, a predominant passion." 2 Turner's Hen. VIII, edi. 1827, p. 163.

<sup>148</sup> *Id.*, p. 133.

King of his 'secret matter'—the projected divorce; Wolsey saying, July 1, "there is nothing earthly that I covet so much as the advancing thereof."<sup>149</sup>

On July 3 Wolsey "began his stately and mysterious embassy to the court of France."<sup>150</sup> "He was permitted, to his own delight, to give his embassy as much royal state and splendor as a subject could warrantably assume."<sup>151</sup> But "the lady regent instantly made it a" "point that "he should not enter France further than Amiens."<sup>152</sup>

Whatever was her motive, there was on his part not 'moderation'<sup>153</sup> but ambitious display all the way.<sup>154</sup>

"It was not till the third day of August that Francis came to Amiens, and Wolsey on the next day proceeded from Picquigny to meet him; but Francis unexpectedly advancing from the town towards him, before he had put on that state dress in which he chose to be seen by the king, he dismounted hastily, into a little chapel by the road side, to decorate himself in richer apparel, and to mount a new mule, superbly trapped in velvet, pearly with gold, with deep golden fringes, silver stirrups, and gold-embossed bridle, making his appearance a gorgeous display of glittering splendor."<sup>155</sup>

On Aug. 18 was signed the treaty of federation, settling the sums to be paid by Henry towards the war, and stipulating that the duke of Orleans should marry Mary, and Francis be at liberty to marry Eleonora.

There "was another treaty, by which the two governments declared that the pope while a prisoner could convoke no general

<sup>149</sup> Vol. I, p. 194, is cited in 2 Mackintosh's Engl., Phila. edi. 1831, pp. 302, 303.

<sup>150</sup> 2 Turner's Hen. VIII, edi. 1827, pp. 120, 121. Mr. Turner says: "As it was really his arm and soul that wielded the military power of England, the two great rivals in Europe were emulous to discover a bribe that would be large enough to affect him." *Id.*, p. 121.

<sup>151</sup> *Id.*, p. 123.

<sup>152</sup> "A boundary that, withholding him from the stare and expected acclamations of the Parisians and the rest of France, could not be a welcomed restric-

tion to his craving vanity." *Id.*; p. 123.

<sup>153</sup> A French King's counsellor "being asked by his Sovereign, as he was retiring from the court, to leave him some general rules for the best government of his kingdom, took a paper and wrote on its top, 'Moderation'—in the middle 'Moderation'—and at the bottom the same emphatic, wise and friendly admonition." *Id.*, pp. 126, 127.

<sup>154</sup> Cavendish, 4. Harl. Miscel., edi. 1809, p. 511 to 516.

<sup>155</sup> 2 Turner's Hen. VIII, edi. 1827, p. 123 to 126.

councils; that all bulls and briefs he might issue during his captivity should be deemed null if to the prejudice of either of the sovereigns, or of Wolsey's legation; that Wolsey might assemble the English clergy, and with the bishops regulate all ecclesiastical affairs in the dominions of England; and that the pontiff should be requested to appoint the cardinal his vicar general in all the countries held under the English crown." <sup>156</sup>

The contemplated divorce of Henry from Katharine occupied much of Wolsey's thoughts upon his journey to France. He writes to the King July 5:

"The first night" "I lodged at Sir John Wiltshire's house,<sup>157</sup> where met me my Lord of Canterbury, with whom after communication had of your secret matter and such other things as have been hitherto done therein, I shewed him how the knowledge thereof is come to the Queen's Grace and how displeasantly she taketh it, and what your highness hath done for the staying and pacification of her; declaring unto her that your Grace hath hitherto nothing intended, nor done, but only for the searching and trying out of the truth, proceeding upon occasion given by the French party, and doubts moved therein by the Bishop of Tarbe."<sup>158</sup>

Under the caption *interview with Bishop Fisher*, in the same letter, is a statement that of late was sent to him from the Queen a message that there were matters between the King and her wherein she would be glad to have his counsel; and to a question put by Wolsey whether he had 'any conjecture or knowledge what the matter should be, he answered, 'That by certain report and relation he knew nothing'; but 'upon conjecture, rising upon such things as he had heard, he thinketh it was for a divorce to be had between your highness and the Queen.' Whereupon Wolsey said unto him that although "your highness was minded not to disclose the same to

<sup>156</sup> *Id.*, p. 126 to 128.

<sup>157</sup> Sir *John* died Dec. 28, 1526, 2 Fuller's *Worthies*, p. 179. Cavenish's words are "two miles beyond Deptford" (Dartford), "in Kent, to Sir *Richard* Wiltshire's house." 4 Harl. Miscel., p. 511, ed. 1809. At Dartford, 15 miles from London, and 6 from Gravesend, "Henry VIII fitted up the buildings as a royal palace." 3 Dugdale's *Engl. and Wales*, p. 587.

<sup>158</sup> "Gabriel de Grammont, Bishop of

Tarbes, was one of those" "on an embassy from France in the spring of 1527." 2 Mackintosh's *Engl.*, Phila. ed. 1831, Appendix, p. 303; citing "State Papers Hen. VIII," vol. 1, p. 196. The Bishop of Tarbes landed at Dover Feb. 26, 1526-7; and, on May 5, took his leave. It is stated that he went to France in the spring, and was in England again before May 5. 2 Turner's *Hen. VIII*, ed. 1827, pp. 142, 143, and note 38.

many, but as secretly to handle it as might be, and therefore did communicate it to very few, yet now" "your highness had given me special commission and charge to disclose the same unto him, taking an oath of him to keep it close and secret, and to show his mind and opinion what he thought therein. After the which oath taken," matter was disclosed as stated in the letter.<sup>159</sup> In passing from Calais thro' Bologne and Montreal, Wolsey had but a day's short rest at each; but he stayed almost a fortnight at Abbeville.<sup>160</sup> Thence was written the letter of July 29, wherein Wolsey mentioned his "daily and hourly musing and thinking on" the King's "great and secret affair" and considers "how the same may come to good effect and desired end, as well for the deliverance of your Grace out of the thrall'd, pensive and dolourous life that the same is in, as for the continuance of your health and the surety of your life and succession."<sup>161</sup> Wolsey wrote to the King from Amiens in August, on the 11th,<sup>162</sup> and the 16th. On the latter day he says,

"There is little or nothing more to be capitulated or treated with the French king, unless it be the opening of *your secret matter*; the disclosing whereof I purpose to defer till I shall be at the point of my departure; handling the same after such a cloudy and dark sort, that he shall not know your grace's utter determination and intent in that behalf, till your highness shall see to what effect the same will be brought."<sup>163</sup>

The King delivered to Secretary Knight (afterwards bishop of Bath and Wells) this letter, and commanded him to give Wolsey "his most hearty thanks for abiding a time convenient before that" he "discover any part of the said secret unto the French king."<sup>164</sup>

<sup>159</sup> *Id.* (2 Mackintosh), p. 304 to 306; citing "State Papers Hen. VIII," vol. 1, p. 198.

<sup>160</sup> 2 Turner's Hen. VIII, ed. 1827, p. 158. "Touching the going of Francis Phillippes into Spain, Wolsey wrote to the King July 19, "Your highness taketh it surely in the right, that it is chiefly for disclosing of the secret matter unto the Emperor, and to devise ways and means how your intended purpose might be impeached." 2 Mackintosh,

pp. 306, 307; citing 'State Papers Hen. VIII,' vol. 1, p. 230.

<sup>161</sup> *Id.* (2 Mackintosh), pp. 307, 308; citing 'State Papers Hen. VIII,' vol. 1, p. 230; 2 Turner's Hen. VIII, ed. 1827, pp. 137, 138.

<sup>162</sup> *Id.* (2 Mackintosh); citing 'State Papers Hen. VIII,' vol. 1, p. 254.

<sup>163</sup> 2 Turner's Hen. VIII, ed. 1827, pp. 158, 159.

<sup>164</sup> Sir H. Ellis's 3d series of Orig. Let., vol. 2, p. 101; 6 Lingard's Engl.,

Wolsey had previously written the King as to "conducting of your secret matter to the desired end," and said, "which to bring to pass is my daily study and most inward desire."<sup>165</sup>

On Sept. 2, Wolsey went 20 miles to Compiègne; the French king, the Lady Louise (the regent) and others (ladies and nobles) of the French court were there. Sept. 13, in a letter from Compiègne, Wolsey mentions a protestation and commission as two of the documents which he had advised and prepared.<sup>166</sup> Mr. Turner considers,

"There is" "in this letter" an indication "that some divergency of opinion was arising between him and the king, on some part of the subject."<sup>167</sup>

All of what has so far been stated as to Wolsey had occurred "before he knew that the king had selected Anne Boleyn to be the queen."<sup>168</sup>

"Wolsey left Compiègne after the middle of September, arrived at Boulogne on the 21st, and hastened to England with such little delay that on 9th October he was able to write to the king from Hampton court."<sup>169</sup>

Cavendish's 14th chapter is 'Of the French Ambassador's entertainment and dispatch.'<sup>170</sup> He says:

"After this began new matters"—"viz., the long concealed affection of the King to Mrs. Anne Bullen now broke out which his majesty disclosed to the cardinal, whose often persuasions, on his knees, took no effect."<sup>171</sup>

This *breaking out* of "the long concealed affection," was in 1527, and Mr. Turner thinks was after Octo. 20.<sup>172</sup>

ch. 3, pp. 124, 125; Letters of Sept. 13, 1527, Jan. 9, and Jan. 13 (1528) in 1 State Tr., pp. 301, 302.

<sup>165</sup> 2 Turner's Hen. VIII, edi. 1827, p. 159.

<sup>166</sup> 2 Turner's Hen. VIII, edi. 1827, p. 128, and pp. 158, 159.

<sup>167</sup> *Id.*, pp. 159, 160.

<sup>168</sup> *Id.*, p. 138.

<sup>169</sup> *Id.*, p. 161.

<sup>170</sup> 4 Harl. Miscel., edi. 1809, p. 521 to 525.

<sup>171</sup> *Id.*, p. 526.

<sup>172</sup> He says: "It was on the 20th of October that the complimentary ambassadors from France visited England with the order of St. Michael, and were splendidly feasted by Henry." 2 Turner's Hen. VIII, edi. 1827, p. 173; 6 Lingard's Engl., ch. 3, p. 114, and note (D) on p. 384; 1 Campbell's Lives of Chancellors, ch. 28, p. 483 of vol. 1 edi. 2 (1846), p. 450 of Boston edi. 1874.



The cardinal's "often persuasions on his knees" taking no effect, he, with leave of the king, sent out commissions for an assembly before him at Westminster of bishops and learned men of both universities and divers cathedral colleges. This assembly parting without any resolution, the king sent commissioners to universities in and out of England, to bring thence opinions under seal. Those opinions and the opinions of prelates of England, were sent to the pope.<sup>173</sup>

"As December began, Wolsey found that the omnipotence of his power of persuasion or command had ceased upon Henry. He combatted against the attractions of Anne only to be so signally defeated as to see no safety to himself, but by encouraging what he wished to have prevented."<sup>174</sup>

Stephen Gardner, doctor of law, and secretary to Wolsey, and Edward Fox, provost of King's College in Cambridge, receiving their instructions in Feb., repaired to France and then to Italy, coming to Orvieto where the Pope then was.<sup>175</sup>

The King's love letters to Anne<sup>176</sup> make a part of the *Codices Vatican* No. 3731.<sup>177</sup> It is observed that

"Few love letters, so unexpectedly betrayed to the public eye, will bear so close a scrutiny. Their respectful language is an irresistible attestation of Ann Boleyn's virtue, and of the impression it had made upon her royal admirer."<sup>178</sup>

The King having co-operated with some of his ablest prelates to

<sup>173</sup> Ch. 15 of Cavendish in 4 Harl. Miscel., pp. 526, 527; 3 Hume's Engl., ch. 30, p. 184.

<sup>174</sup> 2 Turner's Hen. VIII, edi. 1827, pp. 174, 175. 2 Burnet, p. 7, is cited for the instruction of Dec. 5 to Cassalis.

<sup>175</sup> State Tr., pp. 302, 303; 6 Lingard's Engl., ch. 3, pp. 132, 133. They left England Feb. 10, and arrived at Orvieto March 20. 2 Turner's Hen. VIII, edi. 1827, p. 209, note 6.

<sup>176</sup> Numbered 1 to 17 in 1 Harl. Miscel., edi. 1808, p. 189 to 199. Dr. Lingard's idea of the times at which the seventeen were respectively written, is in 6 Lin-

gard's Engl., ch. 3, p. 157, note.

<sup>177</sup> "Mr. Gunn has given the most complete edi. of them (being 17) in the Pamphleteer, No. 42 and 43, correctly copied from the autographs in the Vatican palace." 2 Turner's Hen. VIII, ch. 23, p. 227, note 2. Observing that "most of these letters are in French," Mr. Turner says the translation in *Id.*, p. 228, *et seq.*, is "made as close as possible." Of No. 4 and No. 11 a translation is in Scoones's Engl. Letters, N. Y. edi. 1880, p. 15 to 17.

<sup>178</sup> *Id.*, p. 228.

comprise, in a small book, the most forcible arguments for his divorce, sent it to the pope. In his letter in 1 Harl. Miscel., p. 198 (Letter xvi), are the words: "My book maketh substantially for my matter in writing whereof I have spent above four hours this day." The fact that the book was presented to the pope in the latter part of March, 1528, is regarded by Mr. Turner as "leading near to the true chronology" of the letter, which seems to him "to be the earliest from the king to his favorite subject."<sup>179</sup>

The bull of April 13, 1528, was not made use of; there was a new commission of June 6, appointing the Cardinals Wolsey and Campeggio (an Italian) joint legates to judge the marriage.<sup>180</sup>

During the pestilence (called the sweating sickness),<sup>181</sup> Henry was pleased that Anne should be carried to Hever.<sup>182</sup> In this retirement he sent her the letter in the latter part of which are these words:

"Seeing that I cannot be personally in your presence, I send you the nearest thing to it which I am able, my picture set in bracelets, with the device that you already know, wishing to be in their place wherever you shall please."<sup>183</sup>

His next letter to her begins thus:

"Because the time seems to me to have been very long since I have heard of your good health and you, my great affection for you persuades me to send to you the bearer of this, to be better assured of your health and wishes. And as *since my parting with you I am told that the opinion in which I left you is entirely changed, and that you will not come to court neither with my lady, your mother, nor otherwise*; if this report be true, I cannot enough wonder at it, as I am certain that I never committed a fault towards you, and it is but a small return for the great love I bear you, to keep from me both the conversation and the person of that woman whom I most esteem in the

<sup>179</sup> 2 Turner's Hen. VIII, edi. 1827, p. 229; 5 Lingard's Engl., ch. 3, p. 123.

<sup>180</sup> 1 Harl. Miscel., edi. 1808, pp. 185, 186; 6 Lingard's Engl., ch. 3, p. 133 to 139. At Viterbo was given the commission of June 6, and the pollicitation of July 13, (1528.) They are in 1 State Tr., p. 304 to 306, and p. 317 to 319.

<sup>181</sup> In London, and some other parts of England in May, and stated to have raged violently in June.

<sup>182</sup> 6 Lingard's Engl., ch. 3, p. 139; Miss Strickland's Queens of England, vol. 4, p. 146. He is spoken of as 'for a time returning to the company and conversation of his Queen.' *Id.*, pp. 97, 98.

<sup>183</sup> No. 1, in 1 Harl. Miscel., edi. 1808, pp. 189, 190. The words in the text are from 2 Turner's Hen. VIII, edi. 1827, p. 230.

world. If you love me with as good an affection as I hope for, I am sure that the separation of our persons must be a little displeasing to you."<sup>184</sup>

In 'letter iii' <sup>185</sup> Henry says,

"My uneasiness, from the doubt of your health, greatly troubles and distracts me. I cannot be tranquil without knowing some certainty about it; but as you have as yet felt nothing from it, I hope and keep myself assured that it will pass away from you, as I trust it has from us. While we were at Waltham, <sup>186</sup> two ushers, two valets de chambre and your" *frere, mestre tresore*, <sup>187</sup> "fell sick, but are now quite well. We have since been at Hunsdon, where no disease occurred. I think if you would retire from" *du lieu Surry*, <sup>188</sup> "as we did, you will escape the danger. Another thing may comfort you: that indeed few or no women have had the disease, and none in our court, and few elsewhere have died of it. Therefore I entreat, my entirely beloved, to have no alarm, nor to let our absence displease you; for wherever I may be, I am yours."—"Cheer yourself, and take courage, and avoid the evil as much as you can. I hope soon to cause you to sing 'le renvoyé.'"—"I wish you were in my arms to divest you of some of your unreasonable fancies."<sup>189</sup>

This letter is supposed "to have been writ in July."<sup>190</sup> Anne's illness is the subject of a letter expressing anxiety.<sup>191</sup>

"The malady, in July, attacked both her and her father, and also the ambassador, whose dispatches record the fact. Henry, more alarmed, removed with his queen farther off, increased his precautions, and confessed every day. Wolsey became as apprehensive and as cautious,<sup>192</sup> while his household suffered for it."<sup>193</sup>

Letter iv, <sup>194</sup> "supposed to have been written in August," <sup>195</sup> begins thus:

<sup>184</sup> *Id.*, pp. 230, 231; No. 2, in 1 Harl. Miscel., ed. 1808, p. 190.

<sup>185</sup> 1 Harl. Miscel., p. 191.

<sup>186</sup> (In Surrey county,) distant from London 16 miles.

<sup>187</sup> Translated "brother, master treasurer," in 1 Harl. Miscel., 191; 'friar, master Jerenere,' in 2 Turner's Hen. VIII, ed. 1827, p. 235.

<sup>188</sup> Translated 'from the Surrey side' in 1 Harl. Miscel., 191; 'from Surry' in 2 Turner's Hen. VIII, ed. 1827, p. 236.

<sup>189</sup> *Id.*, pp. 235, 236.

<sup>190</sup> 1 Harl. Miscel., p. 187. The

malady and abode at Hever are mentioned also in letter xiii, p. 197.

<sup>191</sup> Marked No. 12 in *Id.*, p. 196; a translation of it is in 2 Turner's Hen. VIII, ed. 1827, pp. 236, 237.

<sup>192</sup> *Id.*, p. 236. Mr. Turner there, in note 18, says: "It is in his letter of 21st July that Bellay mentions these circumstances; she had then recovered;" citing Le Grand, 3 p. 152.

<sup>193</sup> *Id.*, 145.

<sup>194</sup> *Id.*, pp. 191, 192; Scoones's Engl. Letters, N. Y. ed. 1880, pp. 15, 16.

<sup>195</sup> The writer of this supposition considers this "the most important in all

"Debating with myself the contents of your letters, I am in a great agony from not knowing how to understand them, whether to my disadvantage, as some places indicate, or to my advantage, as I would infer from others. I earnestly entreat you to certify to me expressly your whole intention as to the love which is between us. Necessity compels me to obtain this answer, as I have been *more than a year struck with the dart of love*,<sup>196</sup> and I am not yet sure whether I shall fail or find a true affection placed in your heart."—"If it shall please you to do the office of a truly loyal mistress and friend, and to give yourself body and heart to me, who am and have been your most loyal servant, unless by your rigour you shall forbid it, I promise you that not only the name shall be your due but I will also take you for my sole mistress."<sup>197</sup>

Observations in 1 Harl. Miscel., ed. 1808, p. 187, support the view that neither in the garden of Hever nor anywhere else had Anne been observed by Henry before her return to England with her father in the early part of 1527;—that 1527 was the year in which, by her, he was '*struck with the dart of love*.' Her answer to letter iv greatly rejoiced him. In letter No. v<sup>198</sup> he says:

"For a present so charming that nothing on the whole could be more so, I most cordially thank you, not only for the fine diamond and the ship in which the solitary damsel is in such distress,<sup>199</sup> but principally for the sweet interpretation and too humble submission used in the case by your benignity."—"The demonstrations of your affection are such—the sweet words of your letter are so cordially expressed—as to lay me under an obligation forever truly to honour, love and serve you. I entreat you to please to continue in the same firm and constant purpose."<sup>200</sup>

Now, both Henry and Anne were contemplating that Katharine

the collection, for *it fixes the time when his affection to Anne Boleyn began*."

1 Harl. Miscel., p. 187.

<sup>196</sup> The writer just mentioned observes of Henry, "*that he pleads all the merit that a long attendance could give him; and therefore if, instead of a year, he could have called it a year and a half, or two years, he would certainly have done it, to make his argument the stronger*." He concludes, "from the same words, that he had not then known her much above half a year; for it would have been an ill compliment in him to let her

understand that he had seen her some time before he was at all in love with her." *Id.*, p. 187.

<sup>197</sup> 2 Turner's Hen. VIII, ed. 1827, ch. 23, pp. 231, 232.

<sup>198</sup> 1 Harl. Miscel., pp. 192, 193.

<sup>199</sup> 2 Turner's Hen. VIII, ed. 1827, pp. 232, 23. "The picture of a young maiden in danger from a tempest, delicately hinted the perils of her own situation from his preference under the circumstances which entangled him," *Id.*, p. 232.

<sup>200</sup> *Id.*

would cease to be, and Anne would become, Henry's wife; and were anxiously looking for the arrival of the legate Campeggio and some proceedings.<sup>201</sup> Wolsey, with the co-operation of Anne's father, arranged as to the place for Anne when again at court.<sup>202</sup> Her return is mentioned by the French ambassador. On Aug. 20, he wrote to his court:

"Mlle. de *Boulan* has returned to the court. I believe the King to be so infatuated with her that none but heaven could dispossess him of his passion."<sup>203</sup>

Speaking of Henry's soliciting the pope for a divorce from Katharine, Dr. Robertson says:

"Several motives combined in prompting the king to urge his suit. As he was powerfully influenced at some seasons by religious considerations, he entertained many scruples concerning the legitimacy of his marriage with his brother's widow; his affections had long been estranged from the queen, who was older than himself, and had lost all the charms which she possessed in the earlier part of her life; he was passionately desirous of having male issue; Wolsey artfully fortified his scruples, and encouraged his hopes, that he might widen the breach between him and the emperor, Katharine's nephew; and what was more forcible perhaps, in its operations than all these united, the king had conceived a violent love for the celebrated Anne Boleyn, a young lady of great beauty, and of greater accomplishments, whom, as he found it impossible to gain her on other terms, he determined to raise to the throne."<sup>204</sup>

Now, it might appear to Wolsey that on the subjection of Italy to the emperor, the pope's condition precluded hope of obtaining from him the divorce which Henry desired. Wolsey made his last effort to turn the king's mind from Anne, and suggested that the

<sup>201</sup> Letters to Wolsey in 1 Harl. Miscel., 199, 200; Scoones's Engl. Letters, N. Y. edi. 1880, pp. 17, 18; Letter vi in 1 Harl. Miscel., p. 193; Letter xiv in *Id.*, pp. 197, 198; 2 Turner's Hen. VIII, edi. 1827, p. 238 to 240; pp. 242, 243; p. 243 to 246; and pp. 255, 256; 6 Lingard's Engl., ch. 3, p. 134, *et seq.*; 1 Froude's Engl., ch. 2, N. Y. edi. 1872, p. 142.

<sup>202</sup> Letters vii and viii in 1 Harl. Miscel., pp. 193, 194, and letter xi, pp. 195, 196; Letters xv and xvii, pp. 198, 199; 6 Lingard's Engl., ch. 3, p. 140; 1 Froude's Engl., ch. 2, p. 149, N. Y. edi. 1872.

<sup>203</sup> 2 Turner's Hen. VIII, edi. 1827 p. 241, note 29; citing Le Grand, p. 164.

<sup>204</sup> 2 Robertson's Charles V, Boston edi. 1857, pp. 197, 198.

pope might not conform to his will; but he only excited a storm in his sovereign's mind, which threatened ruin to himself.<sup>205</sup>

"The pontiff's secretary, in September, privately wrote to Campegio, expressing his master's apprehensions, urging him to delay his journey to England as long as possible, and ordering him to try, when forced to go there, to reconcile the king and Katharine; but on no account to decide the litigated question. These cautions were repeated a few days after. He was again directed not to decide";—"he was to do nothing but to hear and procrastinate."<sup>206</sup>

Though the king and queen may have continued to use the same table and the same bed,<sup>207</sup> yet she having Anne "daily attending upon her," both heard and saw how things tended.<sup>208</sup>

"That a face so beautiful; that her subduing eye, her lively vivacity, her courtly elegance, her dignified form, and her engaging manners, should impress the sensibility of Henry, as they fascinated lord Percy, and interested Wyatt, was," it seems to Mr. Turner, "a natural effect of such rich and rare endowments of that divine artist from whose matchless skill and benign taste all beauty springs."

Queen Katharine did not dismiss her attendant, but is said to have alluded gracefully both to the king's partiality and to Anne's virtuous resistance. Wyatt mentions,

"That the queen playing with her at cards, said to her as an honor turned up as she was dealing, 'My Lady Anne, you have good hap to stop at a king; but you are not like others: you will have all or none.'<sup>209</sup>

However, it is said the King caused Anne to be away from court<sup>210</sup> shortly before or after the legate Campegio reached London.

<sup>205</sup> 2 Turner's Hen. VIII, edi. 1827, p. 234, p. 241.

<sup>206</sup> *Id.*, p. 252.

<sup>207</sup> 6 Lingard's Engl., ch. 3, p. 141; citing from L'éveque de Bayonne, p. 170, Octo. 16, 1528.

<sup>208</sup> Cavendish, ch. 10, 4 Harl. Miscel., p. 505; Miss Strickland's Queens of Engl., vol. 4, p. 97.

<sup>209</sup> 2 Turner's Hen. VIII, edi. 1827, p. 202.

<sup>210</sup> 6 Lingard's Engl., ch. 3, p. 141. A few months after her departure from court, her return was desired by the

King, and promoted by her father, who obtained at length (though not without much difficulty) the consent of his unwilling daughter to return; where yet she kept that distance that the King might easily perceive how sensible she was of her late dismissal." *Id.*, p. 148; 1 State Tr., 314. "At the Christmas of 1528," the French ambassador describes the English court as keeping open house in the palace, and not only the King but the Queen also, as she had been accustomed; Miss Anne Boleyn had likewise her separate festivities; but the

In October, 1528, when Campegio reached London, he was suffering and weak.<sup>211</sup> On the 28th he was conveyed in a chair of crimson velvet to the king's presence and placed with Wolsey on the right hand of the throne, where he made a speech.

"The legates then paid a visit to the person that is most justly entitled to our real sympathy in the transaction—the injured queen—and made a formal declaration, that they were the deputed judges to determine on the validity of her marriage. She was nearly overcome by the painful address. She paused awhile and then said, 'Alas! my lords! and is it now a question, whether I be the king's lawful wife or not?—now, when I have been married to him almost twenty years, and in the meantime, no question made of it before? Divers prelates yet alive, and lords also, and privy councillors with the king, at that time adjudged our marriage lawful and honest, and now to say it is detestable and abominable; I think it is a great marvel. When I consider what a wise prince the king's father was; and also the love and natural affection which Ferdinand my father bore unto me, I cannot but suppose that neither of our parents were so uncircumspect, so unwise, and of such small imagination that they could not foresee what might follow from such a marriage.'" <sup>212</sup>

She then inveighed against Wolsey;<sup>213</sup> attributing to him the idea of the divorce because she had censured his dissolute mode of life, and because he hated the emperor;<sup>214</sup> and saying "for all his wars and vexations he may only thank you."<sup>215</sup>

This speech of the Queen was before Nov. 1.<sup>216</sup> There were many

ambassador thought that she no longer associated with Catharine." 2 Turner's Hen. VIII, edi. 1827, p. 263; citing letter 25 Dec., p. 260, of Le Grand, v. 3.

<sup>211</sup> 1 State Tr., p. 309; 6 Lingard's Engl., ch. 3, p. 141; Letter xvii in 1 Harl. Miscel., p. 199; 2 Turner's Hen. VIII, edi. 1827, pp. 255, 256.

<sup>212</sup> *Id.*, pp. 256, 257.

<sup>213</sup> "Of this trouble I only may thank you, my lord cardinal of York; for because I have wondered at your high pride and vain glory, and abhor your voluptuous life, and little regard your presumptuous power and tyranny, therefore of malice you have kindled this fire and set this matter abroad; and in

especial for the great malice that you bear to my nephew, the Emperor, whom I perfectly know you hate worse than a scorpion, because he would not satisfy your ambition, and make you Pope by force." *Id.*, pp. 140, 141.

<sup>214</sup> *Id.*, p. 140.

<sup>215</sup> *Id.*, p. 257; citing Hall (754-5), who "had the speech, which was in French, from the new legate's secretary, who was present."

<sup>216</sup> "The Bishop of Bayonne, on 1st November, reported the substance of the Queen's speech to his court." Le Grand 3, p. 195, is cited in 2 Turner's Hen. VIII, edi. 1827, p. 257, note 38.

who had a higher regard for the Queen and her cause than for the King and his; and who were not always silent.<sup>217</sup>

"The King undertook to silence the murmurs of the people and summoned to his residence in the Bridewell (Nov. 8), the members of his council, the lords of his court and the mayor, aldermen and principal citizens. Before them he enumerated the several injuries which he had received from the emperor, and the motives which induced him to seek the alliance of the King of France. Then taking to himself credit for delicacy of conscience, he described the scruples which had long tormented his mind on account of his marriage with the widow of his deceased brother."—"He consulted the pontiff, who had appointed two delegates to hear the cause, and by their judgment he was determined to abide. He would therefore warn his subjects how they ventured to arraign his conduct. The proudest among them should learn that he was their sovereign, and should answer with their heads for the presumption of their tongues."<sup>218</sup>

Though according to order from the pope, Campegio "did both persuade the queen to a divorce and dissuade the king from it," "yet he failed in both."<sup>219</sup> To enforce the cause with the pope the king dispatched to Rome, Dec. 8,<sup>220</sup> Sir Francis Bryan, master of the henchmen, and Peter Vannes, his secretary for the latin tongue. They had instructions,

"To retain the ablest canonists in Rome as counsel for the King; and to require, with due secrecy, their opinions on the three following questions: 1. Whether if a wife were to make a vow of chastity and enter a convent, the pope could not, of the plenitude of his power, authorize the husband to marry again; 2. Whether if the husband were to enter into a religious order that he might induce his

<sup>217</sup> 6 Lingard's Engl., ch. 3, p. 142.

<sup>218</sup> *Id.*, pp. 143, 144. Of this speech a different version by Hall (from memory) is mentioned in *Id.*, p. 144, *note*. There may also be reference to 1 State Tr., 314, and Miss Strickland's Queens of Engl., vol. 4, p. 99. '*Henrici regis Octavi de repudianda dominâ Catherinâ Oratio Idibus Novembris habita 1528*,' is cited from Wilkins's Concilia, vol. 3, p. 714, in 1 Froude's Engl., ch. 2, pp. 151, 152, of N. Y. edi. 1872.

<sup>219</sup> 6 Lingard's Engl., p. 141 to 143; 1 Froude's Engl., ch. 2, p. 145; 1 State

Tr., pp. 314, 315.

<sup>220</sup> There were others after this date. It is stated that "a month afterwards Dr. Knight was commissioned thither with new urgencies and solicitations." 2 Turner's Hen. VIII, edi. 1827, p. 259. Cavendish mentions "Dr. Stephen Gardner," 4 Harl. Miscel., 535. He was dispatched "in the commencement of the year 1529." Miss Strickland's Queens of Engl., vol. 4, p. 154. Jan. 25. 2 Turner's Hen. VIII, edi. 1827, pp. 264, 265.



wife to do the same, he might not be afterwards released from his vow and at liberty to marry; and 3. Whether for reason of state the pope could not license a prince to have, like the ancient patriarchs, two wives, of whom one only should be publicly acknowledged and enjoy the honours of royalty."<sup>221</sup>

In the spring of 1529, the King charged the two cardinals to proceed:<sup>222</sup> "There was a court erected at Blackfriars, London, where these two cardinals sat as judges." The day appointed for the session to begin was in May, 1529.<sup>223</sup> "The judges commanded the cryer to proclaim silence whilst the commission was both read to the court and to the people there assembled. That done, and silence being again proclaimed, the scribes commanded the cryer to call King Henry of England; whereunto the King answered and said, Here. Then called he again the Queen of England by the name of Katharine, Queen of England, come into the court, &c.,<sup>224</sup> who made no answer thereunto, but rose immediately out of her chair where she sat, and because she could not come to the King directly by reason of the distance, therefore she came round about the court to the King,<sup>225</sup> and kneeled down at his feet, saying in broken English as followeth:

"Sir," "I beseech you do me justice and right, and take some pity upon me, for I am a poor woman and a stranger, born out of your

<sup>221</sup> 6 Lingard's *Engl.*, ch. 3, p. 142 to 144. In 1 *State Tr.*, 308, after the second question, the language is, "Thirdly, if this may not be done, whether he can dispense with the King to have two wives, and the children of both legitimate?" There was obtained from the Pope nothing more than had been granted in the commission to Cardinal Wolsey and Campejus. *Id.*, Bryan's letter of Jan. (or Feb.), 1529, to Wolsey is in 2 Mackintosh's *Engl.*, Phila. edi. 1831, Appendix, p. 309.

<sup>222</sup> 1 *State Tr.*, 317.

<sup>223</sup> The 31st is in 6 Collyer's *Engl.*, ch. 2, p. 197; 21st in 1 *State Trial* 317; 28th in 2 Turner's *Hen. VIII.*, edi. 1827,

p. 272; and Miss Strickland's *Queens of Engl.*, vol. 4, p. 100.

<sup>224</sup> "The King and Queen were cited and summoned to appear, which was a strange sight, and the newest device that ever was heard or read of in any story or chronicle." Cavendish, ch. 15 and 16; 4 Harl. Miscel., 527, 528.

<sup>225</sup> "There were many tables and benches set in manner of a consistory, one seat being higher than another for the judges aloft; above them, three degrees high, was a cloth of estate hanged, and a chair, royal, under the same, wherein sat the King, and some distance off sat the Queen." *Id.*, 528.

dominions, having here no indifferent council,<sup>226</sup> and less assurance of friendship. Alas! sir, how have I offended you? What offence have I given you, intending to abridge me of life in this sort? I take God to witness, I have been to you a true and loyal wife; ever conformable to your will and pleasure; never did I contrary, or gainsay your mind, but always submitted myself in all things, wherein you had any delight or dalliance, whether it were little or much, without grudging, or any sign of discontent: I have loved for your sake all men whom you have loved, whether I had cause or not, were they friends or foes; I have been your wife these twenty years, by whom you had many children: And when I first came to your bed, I take God to witness I was a virgin; whether it be true or no, I put it to your conscience. If there be any cause that you can allege, either of dishonesty, or of any other matter lawful to put me from you, I am willing to depart with shame and rebuke; but if there be none, then I pray you let me have justice at your hands."

"The King, your father, was a man of such an excellent wit in his time, that he was accounted a second Solomon; and the King of Spain, my father Ferdinand, was taken for one of the wisest kings that reigned in Spain these many years. So they were both wise men and noble princes; and it is no question but they had wise counsellors of either realm, as be now at this day, who thought not, at the marriage of you and me, to hear what new devices are now invented against me to cause me to stand to the order of this court. And I conceive you do me much wrong, nay, you condemn me for not answering, having no council but such as you have assigned me: You must consider that they cannot be indifferent on my part, being your own subjects, and such as you have made choice of out of your own council, whereunto they are privy, and dare not disclose your pleasure. "Therefore I must humbly beseech you to spare me until I know how my friends in Spain will advise me: But if you will not, then let your pleasure be done."<sup>227</sup>

<sup>226</sup> Cavendish says: "There were council for the Queen, Dr. Fisher, bishop of Rochester, and Dr. Standish, bishop of St. Asaph, in Wales, two brave noble divines, especially the bishop of Rochester, a very godly man, whose death many noblemen and many worthy divines much lamented, who lost his head, about this cause before it was ended, upon Tower Hill; as also another ancient doctor, Ridley, a little man, but a great divine." 4 Harl. Miscel., 529. In what sense Katherine meant they were not indifferent is indicated in a subsequent part of her address.

There is mention in 1 State Tr., 317, of the Queen choosing "Archbishop

Warham, and Nicholas West, bishop of Ely, doctors of the law, and John Fisher, bishop of Rochester, and Henry Standish, bishop of St. Asaph, doctor of divinity, her council, &c., according to the permission the King gave her in that behalf."

<sup>227</sup> Cavendish in ch. 16, pp. 529, 530, of 4 Harl. Miscel.; 1 State Tr., pp. 319, 320; 6 Collyer's Engl., ch. 2, pp. 197, 198; 3 Hume's Engl., ch. 30, pp. 172, 173; 6 Lingard's Engl., ch. 3, p. 150; Miss Strickland's Queens of Engl., vol. 4, p. 101. The Queen's speech, and the King's reply, as taken from Holinshed by Shakspeare, are in "King Henry VIII, act ii, scene IV, p. 165, *et seq.* of vol. 6, Lond. edi. 1833.

"And with that she rose, making a courtesy to the King and departed from thence, all the people thinking she would have returned again to her former seat; but she went presently out of the court, leaning upon the arm of one of her servants, who was her general receiver, one Mr. Griffith. The King, seeing that she was ready to go out of the court, commanded the cryer to call her again by these words, 'Katharine, queen of England, come into court.' Lo, quoth Mr. Griffith, you are called again. Go on, quoth she, it is no matter. It is no indifferent court for me, therefore I will not tarry; go on your way; and so they departed, without any further answer at that time, or any appearance in any court after that." Some observations were then made by the King,<sup>228</sup> the Lord Cardinal, bishop of Canterbury and bishop of Rochester, after which 'the court was adjourned until the next day,' when upon the king's counsel alleging the matrimony not good, there were expressions by the bishop of Rochester and Dr. Ridley, in which the Cardinal did not agree.

Thus passed the court from session to session and from day to day,

<sup>228</sup> 4 Harl. Miscel., 530. The King said to the audience: "As the Queen is gone, I will in her absence declare unto you all she hath been to me a true obedient wife, and as comfortable as I could wish or desire; she hath all the virtues and good qualities that belong to a woman of her dignity, or in any of meaner estate." Then after answering the cardinal's question, whether or no he (the cardinal) had been the first and chief mover in this matter, the King said: "The *special* cause that moved me in this matter is a *certain scruple* that pricked my conscience upon certain words spoken by the Bishop of Bayonne, the French ambassador, who came hither to consult of a marriage between the princess, our daughter, the lady Mary, and the Duke of Orleans, second son to the King of France; and upon resolution and determination he desired respite to advertise the King, his

master thereof, whether our daughter Mary should be legitimate in respect of my marriage with this woman, being sometime my brother's wife: which words I pondering, begot such a scruple in my conscience that I was much troubled at it, whereby I thought myself in danger of God's heavy displeasure and indignation; and the rather, because he sent us no issue male, for all the issue male that I have had by my wife died incontinently after they came into the world." 4 Harl. Miscel., 531; 6 Collyer's Engl., ch. 2, pp. 198, 199; 6 Hume's Engl., ch. 30, p. 173; 6 Lingard's Engl., ch. 3, pp. 150, 151. From this statement of Henry, it would seem that 'the *special cause*'—the '*certain scruple*'—began to operate about the time that Anne Boleyn was his partner in a dance at Greenwich, mentioned on p. 944.

till a day on which the cardinal being sent for by the King, was with him about an hour, and after getting home was called on by 'my Lord of Wiltshire, Mrs. Ann Bullen's father,' who told him it was the king's mind he should forthwith go with the cardinal to the queen and persuade her 'to put the whole matter into the king's own hands by her consent.' The cardinal "took his barge and went to Bathhouse to Cardinal Campaine's and so went together to Bridewell, to the queen's lodgings, she being then in her chamber of presence."<sup>229</sup> The cardinals afterwards "went to the king and made a relation unto him of the passages between the queen and them."

The case proceeded from court day to court day until the day on which the king's counsel moved for judgment, when Cardinal Campaine said "I will not give judgment until I have related the whole proceedings to the pope, whose counsel and commandment I will, in this case, observe."—"I adjourn to the court of Rome, from whence our jurisdiction is derived." And so the court was dissolved and no more done.

Thereupon the Duke of Suffolk, by the King's commandment, uttered words importing 'It was never thus in England until we had cardinals amongst us.' Further, the Duke using opprobrious words, the Lord Cardinal responded; excusing himself by his commission, which gave him no authority to proceed to judgment without the pope's knowledge.<sup>230</sup>

This was the last session;—July 23, 1529.<sup>231</sup> Stephen Gardner had in June returned to Westminster from Rome and stated to the King the condition in which he left his affairs there. In a letter of June 25, to ambassadors at Rome, alluding to advocacy there of the

<sup>229</sup> Cavendish, ch. 16; 4 Harl. Miscel., p. 531 to 533, edi. 1809. Mr. Malons observes that the Queen's answer as given by Shakspeare, in "King Henry VIII," act iii, scene 1, pp. 174, 175, of vol. 6, Lond. edi. 1833, is "exactly conformable to that which Cavendish, who was present, has recorded, and which he appears to have heard her pronounce." *Id.*, p. 174, note.

<sup>230</sup> Cavendish, ch. 16, p. 533 to 535 of 4 Harl. Miscel.; 2 Turner's Hen. VIII, edi. 1827, p. 273, and note; Miss Strickland's Queens of Engl., vol. 4, p. 101 to 104.

<sup>231</sup> 6 Lingard's Engl., ch. 3, p. 152 to 154; Campbell's Lives of Chancellors, vol. 1, pp. 488, 489, of 2d edi. (1846), p. 455, of Boston edi. 1874.

cause "at the emperor's agents, or the queen's pursuit," Gardner says:

"In case the Pope, as God forbid, should advocate the said cause, not only thereby the King's Grace and all his nobles should decline from the Pope and See apostolic, but also the same should redound to my Lord Cardinal our common master's utter undoing."<sup>232</sup>

In this year (1529), while the plague raged in Cambridge, Thomas Cranmer was in Essex, at Waltham abbey, in the house of Mr. Cressy (to whose wife he was related). The King's Almoner, Edward Fox (afterwards bishop of Hereford), and Stephen Gardiner, coming to visit the host, there was a conversation in which, upon the question 'whether a man might lawfully marry his brother's widow,' Cranmer said

"That the safest method for the king to pursue would be to lay that question before the most learned divines of the two Universities."

Fox and Gardiner informing the king of this, Henry is said to have exclaimed, 'this man hath gotten the sow by the right ear.'

"He commanded Cranmer to wait on him";—"and directed him to digest, in the form of a general treatise, all his arguments on the subject of the divorce; and in order to his undisturbed application to that task, placed him in the house of Thomas, earl of Wiltshire, where he became the friend and favourite of that nobleman's daughter," Anne.

This is said to have occurred in August, 1529.<sup>233</sup> The chance of obtaining for Henry a divorce under the Pope's authority was but little before,<sup>234</sup> and still less after, the treaty of Cambray, in that month.<sup>235</sup>

The Pope's breve to the King of England, dated "at Rome, Aug. 29, 1529," states that thereby 'the cause itself' was 'suspended till

<sup>232</sup> Sir H. Ellis's 3d series of *Orig. Let.*, vol. 2, pp. 157, 158. Gardner's Letter of Aug. 4, 1529, to Wolsey, is in 2 Mackintosh's *Engl.*, Phila. ed. 1831, p. 309.

<sup>233</sup> Afterwards Cranmer was in the King's service at Cambridge, and on the continent. Thence he returned to Eng-

land, in Nov. 1532. Lodge's *Portr.*, vol. 2, No. 8.

<sup>234</sup> 2 Turner's *Hen. VIII.*, ed. 1827, p. 320, and notes; especially note 41, mentioning letters in Vitell. B. 11, p. 138.

<sup>235</sup> 2 Robertson's *Charles V.*, Boston ed. 1857, pp. 193, 194; 2 Turner's *Hen. VIII.*, ed. 1827, p. 269 to 272.

Christmas day,' that the King might "have time duly and carefully to consider an affair of so great moment and importance," "and thereby settle it without the vexation and trouble which suits of law engender and produce."<sup>235</sup>

As to Wolsey, Mr. Green is mistaken in saying that "*From the close of the Legantine court*, Henry would see him no more."<sup>237</sup> In September (1529), in Northamptonshire, at Grafton, where the King and Anne then were, "My Lord Cardinal took Cardinal Campaine by the hand and kneeled down before the King."

"His Majesty stooped down and, with both his hands, took him up, and then *took him by the hand and went to the window with him and there talked with him a good while.*"<sup>238</sup>

*There was the King's last interview with Wolsey.*<sup>239</sup> Cavendish says:

"The King was in earnest discourse with him, insomuch that I could hear the King say, "How can this be, is not this your hand?" and pulled a letter out of his own bosom and shewed the same to my lord.<sup>240</sup> And, as I perceived, my lord so answered the same that the King had no more to say; but said to my lord, "Go to your dinner, and take my Lord Cardinal to keep you company."—"The King that day dined with Mistress Anne Bullen in her chamber."—"I heard it reported by those that waited on the King at dinner, that Mistress Anne Bullen was offended, as much as she durst, that the King did so graciously entertain my Lord Cardinal."<sup>241</sup>

"The King, for the time, departed from Mistress Anne Bullen, and came to the chamber of presence, and called for my lord, and in the

<sup>235</sup> 1 St. Tr., 358. The breve concludes thus: "In the meantime we do exhort your majesty in the Lord, that, for the sake of conscience, you would not leave the Queen, but till these things shall be determined, comfort and cherish her with the love and affection of an husband, as we trust your highness of your great piety and goodness will do." *Id.*

<sup>237</sup> Hist. of Engl. Peopl., vol. 2, book 5, ch. 3, p. 140, edi. 1879.

<sup>238</sup> Cavendish, ch. 17; 4 Harl. Miscel., edi. 1809, p. 536.

<sup>239</sup> 2 Turner's Hen. VIII, ch. 25, edi.

1827, pp. 275, 276; 6 Lingard's Engl., ch. 3, p. 157; Miss Strickland's Queens of Engl., vol. 4, p. 104.

<sup>240</sup> 4 Harl. Miscel., edi. 1809, p. 536. Mr. Turner says: "This circumstance suits the intimation of Campion, that Sir F. Brian had procured from Rome one of Wolsey's underhand letters to the Pope against the divorce which he sent to Henry." 2 Hen. VIII, p. 276, note 5, edi. 1827; 2 Mackintosh's Engl., Phila. edi. 1831, p. 141.

<sup>241</sup> Cavendish, ch. 17; 4 Harl. Miscel., edi. 1809, p. 536.

great window, had a long discourse with him.”—“Afterwards the king took him by the hand and led him into the privy chamber, and sat in consultation with him all alone, without any other of the lords, till it was dark night.”

“At night was warning given me that there was no room for my lord to lodge in the court; so that I was forced to provide my lord a lodging in the country, about Easton, at one Mr. Empston’s house, where my lord came to supper by torch light.”

The King, when my lord parted from him, had “willed him to resort to him in the morning, for that he would talk further with him about the same matter; and in the morning my lord came again, at whose coming the king’s majesty was ready to ride, willing my lord to consult with the lords in his absence, and said he would not talk with him, commanding my lord to depart with Cardinal Campaine, who had already taken his leave of the King.”<sup>242</sup>—“So my lord rode away after dinner with Cardinal Campaine, who took his journey towards Rome.”<sup>243</sup>

Cavendish mentions Anne “having always a prime grudge against my lord cardinal for breaking the contract between the Lord Percy and herself”;<sup>244</sup> and speaks of others who bore a secret grudge against” him, and consulted with her.<sup>245</sup> He supposes that though Wolsey did endeavor to please her, yet she for the while was “dissembling the secret grudge in her breast”;<sup>246</sup> he introduces her in “passages conducing to the Cardinal’s fall.”<sup>247</sup> Wolsey was rejected when he repaired to his house at Westminster.

In Michaelmas term “he went into the hall in such manner as he was accustomed to do, and sat in the chancery, being then lord chancellor of England; after which he never sat more.”<sup>248</sup>

<sup>242</sup> *Id.*, p. 537, Cavendish says:

“This sudden departure of the King’s was the especial labour of mistress Anne Bullen, who rode with him purposely to draw him away, because he should not return till the departure of the cardinals. The King rode that morning to view a piece of ground to make a park of, which was afterwards, and is at this time, called Harewell Park, where mistress Anne had provided him a place to dine in, fearing his return before my lord cardinal’s departure.” *Ibid.*

<sup>243</sup> *Ibid.*; 1 State Tr., 339. As to what occurred “when he came to take ship” there may be reference to *Id.*, 339, and

6 Lingard’s Engl., ch. 3, p. 157.

<sup>244</sup> Ch. 10; 4 Harl. Miscel., 505.

<sup>245</sup> *Id.*, pp. 505, 506.

<sup>246</sup> *Id.*, ch. 4, p. 506, and ch. 13, p. 510; 1 *Id.*, pp. 199, 200.

<sup>247</sup> Cavendish, ch. 17; 4 Harl. Miscel., p. 535 to 540; 1 State Tr., p. 360; 6 Lingard’s Engl., ch. 3, p. 146, *note*, p. 155 to 159; 1 Campbell’s Lives of Chancellors, p. 489 to 491 of ed. 2 (1846), pp. 456, 457, of Boston ed. 1874; Miss Strickland’s Queens of Engl., vol. 4, p. 157, *et seq.*

<sup>248</sup> Cavendish, ch. 17; 4 Harl. Miscel., ed. 1809, p. 538.

This may have been Octo. 15.<sup>249</sup> Bellay wrote on Octo. 17:

"I have been to see the cardinal. He has shewn me his case with the most deplorable rhetoric I ever saw; for both his heart and his speech entirely failed him. He wept much and prayed my king and his mother to have pity on him. I can say nothing more striking than his face, which has lost half its proper size. Even his enemies now, tho English, cannot but compassionate him."<sup>250</sup>

Now the duke of Norfolk (Anne Boleyn's maternal uncle) became prime minister of the English Cabinet,<sup>251</sup> with bishop Gardiner as the state secretary (till Thomas Cromwell succeeded to that office).

On Octo. 17, "My Lords of Norfolk and Suffolk," did declare unto my lord, that it was the king's pleasure he should surrender the Great Seal of England into their hands and that he should depart unto Ashur, which is a house near Hampton court belonging unto the bishopric of Winchester."—"He would in no wise agree to their demand without further knowledge of their authority."—"The dukes were fain to depart without their purpose at that time, and returned to Windsor to the king, and the next day they returned to my lord with the king's letters; whereupon in obedience to the king's command, my lord delivered to them the broad seal, which they brought to Windsor to the king."<sup>252</sup>

"My lord, with his train of gentlemen and yeomen, which was no small company, took his barge at his privy stairs and went by water to Putney."<sup>253</sup> He continued "at Ashur three or four weeks."<sup>254</sup>

In the statutes of the parliament which began Nov. 3, 1529,<sup>255</sup> there

<sup>249</sup> "The next day he stayed at home for the coming of my Lords of Norfolk and Suffolk, who came not that day but the next." *Id.*, p. 538.

<sup>250</sup> 2 Turner's Hen. VIII, edi. 1827, p. 277, note 11.

<sup>251</sup> 2 Turner's Hen. VIII, edi. 1827, p. 311; where, in note 2, is cited Bellay's Lett. 22 Octo., Ap., Le Grand 3, p. 377. 'In his absence the Duke of Suffolk, and, above all, Mademoiselle Anne.' See also Miss Strickland's Queens of Engl., vol. 4, pp. 160, 161.

<sup>252</sup> Cavendish, ch. 17; 4 Harl. Miscel., edi. 1809, p. 538. Wolsey "delivered up the seal on 18th Octo., 1529; on the 19th the Duke of Norfolk announced the dismissal of Wolsey from

all his offices to the lords assembled in the star-chamber." 2 Turner's Hen. VIII, edi. 1827, p. 279, note 4; citing Hall, 760.

<sup>253</sup> (In Surrey county,) 4 miles from Richmond, 6 from Kingston, and 9 from Croydon. Of what occurred at Putney less is stated in 4 Harl. Miscel., p. 539, than in 2 Turner's Hen. VIII, edi. 1827, pp. 281, 282.

<sup>254</sup> Cavendish, ch. 17; 4 Harl. Miscel., edi. 1809, p. 539. From "Esher" (or Ashur) he wrote a doleful letter to "goode Mastyr Secretary" (Dr. Stephen Gardiner). Scoones's Engl. Letters, N. Y. edi. 1880, pp. 10, 11.

<sup>255</sup> See *post* in § 10.



is a chapter as to Cardinal Wolsey.<sup>256</sup> It is however stated that articles exhibited against him on Dec. 1 (1529),<sup>257</sup> were not adopted;<sup>258</sup> he received from the King on Feb. 12, 1530, a full pardon. In the spring, after being for a time at Richmond, he repaired to his province of York, carrying with him the King's recommendation in a letter from our 'castell of Wyndstore, the 28th day of March.' He was at Peterborough and Stoby (or Scroby) before reaching Cawood castle, within seven miles of the city of York. At Cawood he was arrested on Nov. 4, 1530, by the earl of Northumberland,<sup>259</sup> accompanied by Sir Walter Walsh (or Welch), one of the privy council. Sunday following he departed with them and others and came to Doncaster; and the third day to Sheffield-park, where he was entertained by Lord Shrewsbury. There came Sir *William Kingston*, constable of the Tower and captain of the guard, with a message from the king to 'be of good cheër,' for that he beareth him 'as much good will as ever,' and he might take his journey at his pleasure. After staying there a fortnight (being part of the time very sick), he went to Hardwick Hall, where he lay at night extremely ill; and came next day to Nottingham, and the day after to Leicester abbey very sick, and 'riding still on his mule till he came to the stairs of his chamber, where he alighted.'—'As soon as he was in his chamber he went straight to bed; this was upon Saturday, and so he continued.' On the Tuesday following he said to Mr. Kingston,

"I pray you have me heartily commended unto his royal majesty, and beseech him on my behalf to call to his princely remembrance all matters that have been between us from the beginning, and the progress; and especially between good queen Catharine and him; and then shall his grace's conscience know whether I have offended him or not."

"He is a prince of a most royal carriage, and hath a princely heart, and *rather than he will miss or want any part of his will, he*

<sup>256</sup> Ch. 25; in 3 Stat. of the Realm, p. 316.

<sup>257</sup> 1 State Tr., p. 372 to 381; 4 Inst., p. 88 to 95. The first signature to the articles is T. More; the last is Anthony Fitzherbert. *Id.*, p. 95.

<sup>258</sup> 2 Turner's Hen. VIII, edi. 1827,

p. 287.

<sup>259</sup> Anne Boleyn's former lover, Henry Percy. Miss Strickland says: "His happiness had been irreparably blighted by his separation from the woman of his heart, and his compulsory marriage with another." *Queens of Engl.*, vol. 4, p. 160.

*will endanger the one-half of his kingdom.* I do assure you. I have often *kneeled before him*, sometimes three hours together, *to persuade him from his will and appetite, but could not prevail.*—"Let me advise you if you be one of the privy council, as by your wisdom you are fit, *take heed what you put in the King's head, for you can never put it out again.*"

Wolsey died that day (the 29th), and the funeral 'was solemnized the day after,' the burial being 'by the abbot, with great solemnity, in the church of the abbey of Leicester—in the middle of the chapel.'<sup>260</sup> News of his death did much affect the King. Wolsey having begun at Windsor a monument for himself, had purposed to make a tomb for the King; after the Cardinal's death the King making use of what he found fit, called it his.<sup>261</sup>

Wolsey's ascendancy over such a man as Henry VIII could not have been attained without the possession of extraordinary mental powers and personal qualities.<sup>262</sup> Queen Katharine naturally viewed the Cardinal (before his death) with disfavour. But to her Shakspeare lets her gentleman usher "speak his good."<sup>263</sup>

*Griffith.* "This cardinal,  
Though from an humble stock, undoubtedly  
Was fashion'd to much honour. From his cradle  
He was a scholar, and a ripe, and good one;  
Exceeding wise, fair spoken and persuading;  
Lofty, and sour, to them that lov'd him not;  
But, to those men that sought him, sweet as summer.  
And though he were unsatisfied in getting,  
(Which was a sin) yet in bestowing, madam,  
He was most princely: Ever witness for him  
Those twins of learning, that he rais'd in you,  
Ipswich<sup>264</sup> and Oxford! one of which fell with him,  
Unwilling to outlive the good that did it;

<sup>260</sup> Cavendish, ch. 18, *et seq.*; 4 Harl. Miscel., p. 542 to 558; Sir H. Ellis's 3d series of Orig. Let., vol. 2, pp. 172, 173, 179, and p. 204 to 206; 1 State Tr., p. 369 to 386; 3 Hume's Engl., ch. 30, pp. 185, 186; 6 Lingard's Engl., ch. 3, p. 160 to 164; 2 Turner's Henry VIII, edi. 1827, p. 287 to 309.

<sup>261</sup> 3 Seward's Anecdotes, pp. 94, 95. It is mentioned that Wolsey "had not forgotten his own image which one Benedetto, a statuary of Florence, took in hand in 1524, and continued till 1529, receiving for so much as was already

done, 4,250 ducats; the design whereof was so glorious, that it exceeded far that of Henry the Seventh." *Ibid.*

<sup>262</sup> Foss's Biogr. Jurid.

<sup>263</sup> King Henry VIII, act iv, scene ii, p. 200 of vol. 6, Lond. edi. 1833. In a note on that page, it is stated that the characters of Wolsey by Katharine and her attendant are founded on passages in Holinshed.

<sup>264</sup> 2 Turner's Hen. VIII, edi. 1827, pp. 307, 308. Ipswich fell with its founder. Foss's Biogr. Jurid.

The other, though unfinish'd, yet so famous,  
So excellent in heart, and still so rising,  
That Christendom shall ever speak his virtue<sup>265</sup>  
His overthrow heap'd happiness upon him."

*Kath.* "After my death, I wish no other herald,  
No other speaker of my living actions,  
To keep mine honour from corruption,  
But such an honest chronicler as Griffith.  
Whom I most hated living, thou hast made me,  
With thy religious truth and modesty,  
Now in his ashes honour: Peace be with him!"

Of Wolsey, there is "from the original of Holbein, in the collection at Christ church, Oxford," a fine engraving.<sup>266</sup> He has been pronounced in England the most extraordinary man that, as favorite or minister, ever ruled the destinies of this kingdom"; his career has been thought to exemplify the truth of Bacon's maxim—that prosperity doth best discover vice, and adversity doth best discover virtue."<sup>267</sup>

7. *Of the Masters of the Rolls in this reign until Wolsey's retirement from the chancellorship, to wit: John Yonge, Cuthbert Tunstall, John Clerke, Thomas Hannibal and John Taylor.*

Dr. *John Yonge*, mentioned in ch. 28, § 14, p. 883, retained the mastership of the Rolls<sup>268</sup> till his death, April 25, 1516; he has the credit of having been a friend of Dean Colet and a patron of Erasmus.<sup>269</sup> Dr. Yonge's successor at the Rolls was Cuthbert Tunstall.<sup>270</sup>

<sup>265</sup> To the College of Oxford was given the name of 'Cardinal College.' On Wolsey's fall, the King refounded it under the name of King's College; but in a few years afterwards, when the Episcopal See was translated to Oxford, it was designated Christ Church. *Id.*

<sup>266</sup> Lodge's *Portr.*, vol. 1, No. 4.

<sup>267</sup> Foss's *Biogr. Jurid.*

<sup>268</sup> Diplomatic services were occasionally required of him. (Lingard vi, 9.) He was presented in July, 1313, to the church of Cherfield, in the archdeaconry of Huntingdon; and on May 17, 1514, succeeded Wolsey as dean of York. Foss's *Biogr. Jurid.*

<sup>269</sup> *Id.* His monument, in the Rolls

Chapel, is the work of Pietro Torregiano, a very eminent Florentine. 1 Walpole's *Painters*, p. 165 of 4th ed. 1786; Ireland's *Inns of Court*, sect. 15, p. 205. It represents him in a scarlet robe, with a four-cornered cap. *Id.*

<sup>270</sup> This grandson of Sir *Thomas Tunstall*, of Thurland Castle, in Lancashire, was born in 1474 or 1475 at Hatchford, in Richmondshire, and was entered at Balliol College, in Oxford, in 1491, but, on account of the plague raging there then, was removed to the sister university as a member of King's Hall, now part of Trinity College. He completed his studies at the University of Padua, where he took the degree of Doctor of

He filled the office from May 12, 1516,<sup>271</sup> until a short time before Octo. 20, 1522,<sup>272</sup> when *John Clerke*<sup>273</sup> was appointed to it. He held the office not quite a year, vacating it Octo. 9, 1523.<sup>274</sup> Next after him was *Thomas Hannibal*,<sup>275</sup> who retained the office from Octo. 9,

Laws, and on his return to England entered into holy orders, being only sub-deacon in 1508. After several ecclesiastical preferments, he was introduced by Archbishop *Warham* to Henry VIII, and employed in diplomatic services, his success on which is supposed to have led to the mastership of the Rolls. Foss's Biogr. Jurid.

<sup>271</sup> In 1519 he was made archdeacon of Chester, and soon afterwards was engaged with Sir *Thomas More* in settling the provisions under the commercial treaty with the Emperor Charles. While at Brussels, on this embassy, his friendship commenced with Erasmus, in whose office he lodged. He became dean of Salisbury in May, 1521, and Bishop of London in Jan., 1522, after which he resigned the mastership of the Rolls. *Id.*

<sup>272</sup> He was appointed keeper of the Privy Seal July 12, 1523, and rendered farther service in various embassies (Sir H. Ellis's 3d series of Orig. Let., vol. 1, p. 230 to 232, and p. 271 to 273, vol. 2, p. 12, p. 20,) until March 25, 1530, when he received restitution of the temporalities of Durham, to which see he had been translated on the resignation of Cardinal *Wolsey*. Subsequently, by temporizing, he preserved the favour of the King, who made him president of the north, and appointed him one of the executors of his will, with a legacy of £300. Foss's Biogr. Jurid.

<sup>273</sup> Educated at Cambridge, where he took the degree of Doctor in Divinity; and probably the *John Clerke*, who with *Richard Pace*, was in the service of Cardinal *Bainbridge* at the time of his unhappy death at Rome, in July, 1514.

(Sir H. Ellis's 3d series of Orig. Let., vol. 1, p. 172 to 180.) He was one of *Wolsey's* chaplains, and after other ecclesiastical preferment was, in 1519, collated to the archdeaconry of Colchester, and installed dean of Windsor. In 1521 he began his career as an ambassador by the presentation to the Pope of the book (mentioned in § 5, p. 935) which Henry VIII had written against *Martin Luther*; and he solicited and obtained the bull by which the pontiff designated Henry as 'defender of the faith.' Orig. Let. Sir H. Ellis's 3d series, vol. 1, p. 254 to 271, and p. 282 to 286; Foss's Biogr. Jurid.

<sup>274</sup> In consequence of his elevation to the bishopric of Bath and Wells. He seems to have been afterwards employed at Rome until 1526, and in that year in France. He accompanied Cardinal Campeggio to England in 1528 (Orig. Let., Sir H. Ellis's 3d series, vol. 2, p. 149 to 151), and engaged on the side of Henry VIII in the matter of the divorce, serving the citation upon Queen Catharine. His last embassy was in 1540 to the Duke of Cleve, to declare the King's reason for divorcing himself from the Duke's sister. On his return he fell ill at Dunkirk, and, by some, there was suspicion of poison. After a lingering illness, he died in London Jan. 3, 1541. His remains were interred first in the nunnery of the minories, and thence removed to the church of St. Botolph Aldgate. Sir H. Ellis's 3d series of Orig. Let., vol. 1, p. 255; Foss's Biogr. Jurid.

<sup>275</sup> In 1504 he entered the University of Cambridge, and received a prebend in the church of York. In 1514 he

1523, till June 26, 1527, when he voluntarily surrendered,<sup>276</sup> and was succeeded by *John Taylor*,<sup>277</sup> who held it for above seven years.<sup>278</sup>

8. *Friendly communications between Wolsey in his latter years and Archbishop Warham. Of this archbishop's age and infirmity. He could not on Wolsey's retirement have desired the chancellorship. Thomas More, in the ascendant. Of his intimacy with Erasmus; and generally of More's life before Octo. 1529.*

Among the letters from Archbishop Warham to Wolsey is one of thanks for manifold favours heretofore, 'and now specially,'

"Not only to advise me to make myne abode in hiegh and dry grounds, as Knoll and such other, but also to offer unto me of your singular benignitie and goodnes a pleasaunte lodging in your mooste holsome manor of Hampton courte, where I should not diseasee

took at Cambridge the degree of Doctor of Laws, and became chancellor of the diocese of Worcester. In 1522 both he and Dr. *John Clerke* were engaged at the Roman court in the double capacity of King Henry's orators and private agents for Cardinal *Wolsey*. Foss's Biogr. Jurid.

<sup>276</sup> Having previously, to wit: in 1524 presented to the King a rose of gold sent by the Pope. *Id.*

<sup>277</sup> One of three produced at a birth in Staffordshire, who being presented as a curiosity to the King, while hunting in that county, were, by the royal command, all carefully educated. John became an eminent canonist. From Wood's description of him as 'a doctor of decrees and of the sacred canons *beyond the seas*,' it is supposed that he took his degree in a foreign university; he is mentioned as incorporated at Cambridge in 1520, and at Oxford in May, 1522. Meanwhile, in 1503, and afterwards, he received several benefices, and, in 1504, was united with Dr. *John Yonge* and others in negotiating a treaty of commerce with Philip, Duke of Burgundy; and in 1 Hen. VIII (1509) was made clerk of the parliament, and im-

mediately afterwards was appointed master in chancery. In June, 1513, he accompanied the King in his invasion of France, witnessing the battle of Spurs, &c.; his diary (in Latin) of the events of the expedition is in the State Paper office. In 1514 he was chosen prolocutor of the convocation, having just previously been collated to the archdeaconry of Derby, which was followed in the next year by that of Buckingham. In May, 1515, he was sent to greet the Venetian embassy at Deptford, and on his introduction made to the ambassador's Latin oration an answer, which is among the Cotton MSS. in the British museum. In 1525 and 1526 he was again in diplomatic duties; in the latter year in France. Foss's Biogr. Jurid.

<sup>278</sup> Mr. Foss states that soon after being appointed Master of the Rolls, he was "sent with several others to invest the French King with the order of the Garter;" and that "he was also named as one of the commissioners to try the validity of King Henry's marriage with Queen Catharine; the duty of examining the witnesses devolving upon him." Biogr. Jurid.

norther be diseased, there to contynue for the atteignyng of my healthe as long as I shuld thinke it expedient."<sup>279</sup>

That before Wolsey's surrender of the Great Seal Warham was old and infirm, is manifest from his reply to Wolsey's letter of September 18, (1528) requesting him to receive Cardinal Campegius at Canterbury and accompany him on his journey towards London.<sup>280</sup> If in 1529 the Great Seal was offered to Warham (which is at least doubtful)<sup>281</sup> it may reasonably be supposed that he declined it because of his age and infirmity, or for other sufficient reason.<sup>282</sup>

Thomas More (mentioned in ch. xxviii, § 13, p. 578 to 580)<sup>283</sup> was now in the ascendant. About a year before his marriage (1505) his opposition to a certain grant had caused the resentment of Hen. VII.<sup>284</sup> After the accession of Hen. VIII, More was appointed one of the governors of Lincoln's Inn. Between his first reading, in the autumn of 1511, and his second in Lent, 1516, his reputation rose high. Now he was counsel in numerous cases; and also undersheriff of London.<sup>285</sup> In a letter of 1516 he tells Erasmus—

'When I returned from my embassy of Flanders, the king's majesty would have granted me a yearly pension; which, surely, if I should respect honour and profit, was not to be contemned by me; yet have I as yet refused it, and I think I shall refuse it, because

<sup>279</sup> Sir H. Ellis's 3d series of Orig. Let., pp. 38, 39. Sir H. Ellis supposes this letter was "written earlier than 1526, since, in that year, Hampton Court was no longer Wolsey's moost holsome maner:' he had given it to the King." *Id.*, p. 38.

<sup>280</sup> *Id.*, p. 149.

<sup>281</sup> 6 Lingard's Engl., ch. 3, p. 165.

<sup>282</sup> Foss's Biogr. Jurid.; 1 Froude's Engl., ch. 2, p. 160.

<sup>283</sup> Although he may have been at New Inn before his admission into the society of Lincoln's Inn, yet the date of his admission into the latter is so early as 11 Hen. VII (1496.) After being an utter barrister, he, for three years, delivered at Furnival's Inn lectures on the

Science of Law. It was perhaps during his residence near the Charter House that he delivered lectures on the work of St. Augustine, *De Civitate Dei*. Foss's Biogr. Jurid.

<sup>284</sup> *Id.*; Lodge's Portr., vol. I, No. 7.

<sup>285</sup> Foss's Biogr. Jurid. He was made under-sheriff Sept. 3, 1510; and still held the office May 8, 1514; an entry then in the city records stating that it was agreed by the common council 'that Thomas Moore, Gent., one of the under-sheriffs of London, should occupy his office and chamber by a sufficient deputy during his absence as the King's ambassador in Flanders.' Afterwards, he was again on an embassy, for which he received a similar license. *Id.*

either I should forsake my present means which I have in the city, which I esteem more than a better, or else I should keep it with some grudge of the citizens, between whom and his highness, if there should happen any controversies (which may sometimes chance), they may suspect me as not trusty and sincere with them, because I am obliged to the king with an annual stipend.'

He then estimated the gains from his office and his private business at £400 a year, which, according to the then value of money, was a large income.<sup>286</sup>

The Utopia is (in the first edition printed at Louvain in 1516) stated to be '*Per Clarissimum et eruditissimum Virum D. Thomam Morum, civem et vice-comitem Londinensem*'<sup>287</sup> The dedication of this work to an intimate friend has (according to one translator) these expressions: ^

"Whilst I daily plead other men's causes, or hear them, sometimes as an arbitrator, otherwhile as a judge; whilst this man I visit for friendship, another for business, and whilst I am employed abroad about other men's matters all the whole day, I have no time for myself, that is for study: for when I come home I must discourse with my wife, chat with my children, speak with my servants; and seeing this must needs be done, I number it amongst my affairs, and needful they are, unless one would be a stranger in his own house; for we must endeavour to be affable and pleasing to whom either nature, chance or choice, hath made our companions; but with such measure it must be done, that we don't mar them with affability, or make them, of servants, our masters, by too much gentle entreaty and favour. Whilst these things are doing, a day, a month, a year, passeth. When then can I find any time to write? for I have not yet spoken of the time that is spent in eating and sleeping, which things alone bereave most men of half their life. As for me, I get only that spare time which I steal from my meat and sleep; which, because it is but small, I proceed slowly; yet, it being somewhat, I have now, at length, prevailed so much, as I have finished and sent unto you, my Utopia."<sup>288</sup>

More's arguments, display of erudition and success in the Star Chamber, in a cause wherein the King claimed forfeiture of a ship belonging to the Pope, led to his elevation. Resigning the under

<sup>286</sup> Foss's Biogr. Jurid.

<sup>287</sup> Campbell's Lives of Chancellors, vol. 1, ch. 30, p. 518 of 2d edi. (1846), vol. 2, p. 10, of Boston edi. 1874.

<sup>288</sup> 1 Lodge's Portr., No. 7. This may

be compared with the letter to Peter Giles at Antwerp, in Campbell's Lives of Chancellors, ch. 31, p. 525 of 2d edi. (1846;) ch. 30, p. 16. of vol. 2, Boston edi. 1874.

sheriffalty (1519) he accepted the office of Master of the Requests; received knighthood, and was introduced into the privy council.<sup>280</sup> Becoming intimate both with the King and Cardinal *Wolsey*, he was engaged in many diplomatic missions. In the parliament which met April 15, 1523, he made as speaker an address, which has been regarded as a model.<sup>290</sup>

At Chelsea, in Middlesex, an estate was purchased, and a spot occupied by Thomas More;<sup>291</sup> before or after Erasmus was in England under More's roof. Consistently with the words quoted from Watkins in § 4, pp. 926, 927, and without controverting the statement that Erasmus was not in England after 1518,<sup>292</sup> one may assent to Mr. Green's language:

"It was at" More's "house that Erasmus penned the 'Praise of Folly'; and the work in its Latin title, '*Moriæ Encomium*,' embodied in playful fun his love of the extravagant humour of More";<sup>293</sup>

And agree with Mr. Foss,

That "the picture of his domestic life is most delightfully drawn by Erasmus."<sup>294</sup>

The following (wherever and whenever written) may be regarded as a picture of which the scene is laid by Erasmus in More's house 'near London upon the Thames,' and in which More is pleasantly described<sup>295</sup> 'in the bosom of his family' at a period of his life<sup>296</sup> when he was at Chelsea:

<sup>280</sup> Foss's Biogr. Jurid. Erasmus says of Henry's conduct to More, 'The King presented him with a magnificent present, tho' neither craving nor soliciting it, with a handsome salary; altho' there was a competitor for it, and he a man sufficiently agreeable, who very earnestly sought for it.' The date, 20 June, 1519, is mentioned—and Ep., p. 68, is cited—in 1 Turner's Hen. VIII, edi. 1827, pp. 48, 49.

<sup>290</sup> Foss's Biogr. Jurid.

<sup>291</sup> T. Dugdale's Eng. and Wales, vol. 2, p. 420. His house there is mentioned in Aubrey's Letters, vol. 2, part 2, edi.

1813, p. 463. Aubrey died about 1700.

<sup>292</sup> Penny Magazine for 1832, vol. 1, No. 36, p. 296.

<sup>293</sup> Green's Short Hist., ch. 6, § 4, p. 319 and p. 327; 2 Hist. of Engl. Peop., book 5, ch. 2, vol. 2, p. 99.

<sup>294</sup> Biogr. Jurid.

<sup>295</sup> It would be interesting to ascertain—that which Mr. Lodge does not state—*where* Erasmus was when he drew this picture; and *when* he drew it.

<sup>296</sup> More's first marriage having been in 1505 (Foss's Biogr. Jurid.), it must have been some years after 1518 before he had 'eleven grandchildren.'



"More hath built near London, upon the Thames, such a commodious house as is neither mean nor subject to envy, yet magnificent enough. There he converseth affably with his family; his wife, his son and daughter-in-law; his three daughters and their husbands; with eleven grand-children. There is not any man living so affectionate with his children as he, and he loveth his old wife as well as if she were a young maid; and such is the excellence of his temper, that whatsoever happeneth that could not be helped, he loveth it as though nothing could have happened more happily. You would say there were in that place Plato's academy; but I do the house injury in comparing it to Plato's Academy, where there was only disputations of numbers and geometrical figures, and sometimes of moral virtues. I should rather call his house a school or university of christian religion, for there is none therein but readeth or studieth the liberal sciences; their special care is piety and virtue; there is no quarrelling, or intemperate words, heard; none seen idle; which household discipline that worthy gentleman doth not govern by proud and haughty words, but with all kind and courteous favour. Everybody performeth his duty, yet there is always alacrity; neither is sober mirth anything wanting."<sup>297</sup>

Erasmus says: "Although More is negligent in his own temporal concerns, yet no one is more assiduous than himself in assisting the suits of his friends."—"If any one were desirous to have a perfect model of friendship, no one can afford him a better than More. In his conversation there is so much affability and sweetness of manner that no man can be of so austere a disposition but that More's conversation must make him cheerful; and no matter so unpleasing but that with his wit he can take away from it all disgust."<sup>298</sup>

More was holding the office of under-treasurer of the Exchequer when, in 1525, he was raised to that of chancellor of the Duchy of Lancaster.<sup>299</sup> In 1527 he "was joined with Wolsey and others in an embassy to the court of France;" in 1529 he "went with Tonstall to Cambray to secure the payment of certain sums due to the King from Charles the Fifth, his success in which business won him the highest approbation."<sup>300</sup> He was with the court at Woodstock on Sept. 3 (1529), and thence wrote to his wife.<sup>301</sup> His merit was universally acknowledged.<sup>302</sup>

<sup>297</sup> This translation from Erasmus is in Lodge's *Portr.*, vol. 1, No. 7.

<sup>298</sup> 3 Seward's *Anecdotes*, p. 96:

<sup>299</sup> Foss's *Biogr. Jurid.*

<sup>300</sup> Lodge's *Portr.*, vol. 1, No. 7.

<sup>301</sup> Scoones's *Engl. Letters*, N. Y. ed., 1880, pp. 11, 12.

<sup>302</sup> 6 Lingard's *Engl.*, ch. 3, p. 166.

9. *The Great Seal delivered to Sir Thomas More 'Octo. 25th, 1529. When inducted into his seat, 'exhortation' by the Duke of Norfolk and answer by More. Generally as to his diligence and purity; and his manner of discharging judicial duty. His ready wit; when a madman would have thrown him from the battlements. The King's appreciation of him. Opinions of the philosopher of the Utopia contrasted with More's practice when in public office.*

The Great Seal was delivered to More by the King 'at his manor of Plesauce alias Est grenwiche' on October 25, 1529.<sup>303</sup>

The next day he was inducted into his seat in the court of chancery after—what is believed to be without previous example on such an occasion—'a noble exhortation' by the Duke of Norfolk, 'as well to the chancellor as to the people, and an answer of the chancellor;' the object seeming to have been to justify the king's selection of a layman, instead of an ecclesiastic or a nobleman, by enlarging on the wisdom, integrity and wit of Sir *Thomas*, and the extraordinary abilities he had already shewn in the affairs that had been entrusted to him.<sup>304</sup> Great was his diligence in the performance of the duties of the chancellorship. The poorest suitor obtained ready access to him, and speedy trial, while the richest offered presents in vain, and kindred found no favour.<sup>305</sup>

<sup>303</sup> Foss's Biogr. Jurid.

<sup>304</sup> Foss's Biogr. Jurid. *More's* answer was modest and becoming, with a graceful and feeling allusion to the fall of his predecessor. *Id.*

<sup>305</sup> The previous custom of presenting new year's gifts often afforded a cover to suitors in his court for tendering bribes, which, when attempted, he would with sly humour evade. A rich widow, named Croker, who had obtained a decree against Lord Arundel, presented him one new year's day with a pair of gloves and forty pounds in angels in them. Emptying the money into her lap, he told her that as it was 'against good manners to forsake a gentlewoman's

new year's gift, he would take her gloves, but refuse the lining.' Another suitor brought him a gilt cup, 'the fashion whereof he very well liking,' caused one of his own, better in value, to be brought, which he willed the messenger in recompense to deliver to his master.' And on a complaint made to the council, after his resignation, that he had accepted a great gilt cup, which a party, in whose favour he had pronounced a decree, had sent to him by his wife,—he acknowledged that he had done so, but further declared that albeit he had indeed received that cup, yet immediately thereupon caused he his butler to fill it with wine, and of that

Besides his regular attendance in the court, he would at his own house, sitting in his open hall, in many instances bring the parties to a friendly reconciliation of their disputes. The matter in complaint being laid before him, with the lawyer's name attached to it, he would refuse to grant a subpoena if he thought the matter too trifling for discussion.<sup>306</sup> But notwithstanding a judgment at law, he would interfere on equitable considerations.<sup>307</sup>

Of More's country house at Chelsea, John Aubrey wrote before 1700:<sup>308</sup>

Where the gate is now, adorned with two noble pyramids, there stood anciently a gate house, which was flat on the top, leaded, from whence is a most pleasant prospect of the Thames and the fields beyond; on this place the Lord Chancellor was wont to recreate himself and contemplate. It happened one time that a Tom of Bedlam came up to him, and had a mind to have thrown him from the battlements, saying, 'Leap, Tom, leap.' The chancellor was in his gown, and besides ancient, and not able to struggle with such a strong fellow. My Lord had a little dog with him; said he, 'Let us first throw the dog down and see what sport that will be'; so the dog was thrown over. 'This is very fine sport,' said my Lord, 'fetch him up and try once more.' While the madman was going down, my Lord fastened the door and called for help, but ever after kept the door shut.<sup>309</sup>

In Sir Thomas the King appreciated not only that solidity of understanding and that integrity of character so valuable in a coun-

cup drank to her; and that when he had so done, and she pledged him, then as freely as her husband had given it to him, even so freely gave he the same again to her to give unto her husband for his new year's gift.' *Id.*

<sup>306</sup> In this duty, as in other cases, his humour would sometimes be shewn. A case having been laid before him by one 'Tubbe,' an attorney, which he found to be on a very frivolous matter, he returned the paper with the words, 'a tale of a prefixed to the lawyer's signature, 'Tubbe.' *Id.*

<sup>307</sup> The common law judges having complained then, as indeed they did for a long time afterwards, that their judg-

ments were suspended by injunctions out of chancery, Sir Thomas caused a list of those he had granted to be made out, and, inviting the judges to dinner, discussed with them the grounds of his decision in each case. On their acknowledging these to be just and reasonable, he recommended them themselves in future to qualify the extreme rigour of the law by like equitable considerations, and thus prevent the necessity of the chancellor's interference. *Id.*

<sup>308</sup> He died about 1700.

<sup>309</sup> Aubrey's Letters, vol. 2, part 2, edi. 1813, p. 462, 463; 4 Seward's Anecdotes, p. 111.

sellow, but those intellectual powers and that liveliness of humour which made him so attractive a companion.<sup>310</sup>

Yet against More there is evidence which it is painful to read.<sup>311</sup>

"This philosopher of the Utopia,<sup>312</sup> the friend of Erasmus, whose life was of blameless beauty, whose genius was cultivated to the highest attainable perfection," has been cited "to prove to the world that the spirit of persecution is no peculiar attribute of the pedant, the bigot or the fanatic, but may co-exist with the fairest graces of the human character."<sup>313</sup>

It may be so. But what is said by Lord Campbell<sup>314</sup> should be carefully weighed with what Mr. Froude has cited.<sup>315</sup> For, as Mr. Green observes of More, "his severities against the Protestants, exaggerated as they" may "have been by Polemic rancour, remain the one stain on a memory that knows no other."<sup>316</sup>

10. *From Nov. 3, 1529, until May 16, 1532: Acts of parliament; especially stat. 21 Hen. VIII, ch. 4, 'concerning executors,' and stat. 23 Hen. VIII, ch. 5, concerning commissioners of sewers. Of discretion; proceedings as to the Queen; and Holbein's portrait of More. More's resignation of the Great Seal. His successor.*

There was an oration by Chancellor *More*<sup>317</sup> of the causes of the parliament in 21 Hen. VIII (1529.) The session began in London on

<sup>310</sup> 3 Seward's Anecdotes, p. 95. Mr. Foss says: "The King's continued enjoyment of his society would be often shewn by his sudden visits to More's house at Chelsea, partaking of his dinner, and treating him with that sort of playful kindness of which there is no other example than the intercourse between Henry II and *Becket*, before the latter was invested with the archiepiscopal mitre." Biogr. Jurid. Green's Short Hist., ch. 6, § 4, p. 327; 2 Hist. of Engl. Peop., ch. 2, p. 99.

<sup>311</sup> 2 Turner's Hen. VIII, edi. 1827, p. 363 to 366.

<sup>312</sup> The contrast between what is laid down in the Utopia, and what More did

when in office, is noticed in 3 Seward's Anecdotes, p. 100; Green's Short Hist., ch. 6, § 4, p. 330; Hist. of Engl. Peop., book 5, ch. 2, pp. 103, 104.

<sup>313</sup> 2 Froude's Engl., ch. 6, p. 79.

<sup>314</sup> Lives of Chancellors, ch. 32, p. 553 to 555 of vol. 1, 2d edi. (1846); p. 42 to 44 of vol. 2, Boston edi. 1874.

<sup>315</sup> 2 Froude's Engl., ch. 6, p. 80 to 94.

<sup>316</sup> Green's Short Hist., ch. 6, § 6, p. 342; Hist. of Engl. Peop., book 5, ch. 4, p. 148.

<sup>317</sup> Lives of the Chancellors, ch. 32, p. 545 of vol. 1, 2d edi. (1846), pp. 34, 35 of Boston edi. 1874, citing 1 Parl. Hist. 490. Hall, p. 764, is cited in 1 Froude's Engl., ch. 2, p. 194 to 196.

Wednesday, Nov. 3, and was continued to the next day, and then holden at Westminster. The statutes of this session embrace 26 chapters;<sup>318</sup> whereof chapters four, five, six, nineteen and twenty, are in 1 'Statutes Revised.'<sup>319</sup> Chapter 4 is "concerning executors of last wills and testaments," and after recital therein enacts—

"That where part of the executors named in any such testament of any such person so making or declaring any such will of any lands, tenements, or other hereditaments, to be sold by his executors after the death of any such testator, do refuse to take upon him or them the administration and charge of the same testament and last will wherein they be so named to be executors, and the residue of the same executors do accept and take upon them the care and charge of the same testament and last will that then all bargains and sales of such lands, tenements or hereditaments so willed to be sold by the executors of any such testator, as well heretofore made, as hereafter to be made, by him or them only of the said executors that so doth accept, or that heretofore hath accepted, and taken upon him or them any such care or charge of administration of any such will or testament, shall be as good and as effectual in the law as if all the residue of the same executors, named in the said testament, so refusing the administration of the same testament had joined with him or them in the making of the bargain and sale of such lands, tenements, or other hereditaments so willed to be sold by the executors of any such testator which heretofore hath made or declared, or that hereafter shall make or declare any such will of any such lands, tenements or other hereditaments after his decease to be sold by his executors."<sup>320</sup>

Ch. 5 is of 'extortion.'<sup>321</sup> Ch. 19 is concerning avowries.<sup>322</sup> Ch. 20 referring to the statute of 3 H. VII, ch. 1,<sup>323</sup> organizing the court of Star chamber, recites that in that statute "the president of the king's most honorable council" is omitted, and in its enactment mentions him, next after the *Chancellor* and treasurer. Historians<sup>324</sup> make observations upon other bills; especially upon the disposition of par-

<sup>318</sup> 3 Stat. of the Realm, p. 282 to 317.

<sup>319</sup> Edi. 1870, p. 378 to 387.

<sup>320</sup> 3 Stat. of the Realm, p. 285; 1 Statutes Revised, edi. 1870, pp. 378, 379. As to "any will or testament heretofore made" there is a proviso. *Id.*

<sup>321</sup> Construed in 6 Jac. 1, in *Neale* and *Rowse*, 13 Rep. 25.

<sup>322</sup> 3 Stat. of the Realm, pp. 303, 304;

1 'Statutes Revised,' edi. 1870, pp. 385, 386.

<sup>323</sup> Mentioned in ch. 28, § 6, p. 869.

<sup>324</sup> 3 Stat. of the Realm, p. 304; 1 'Statutes Revised,' edi. 1870, pp. 386, 387.

liament "to reduce the power and privileges of the ecclesiastics."<sup>325</sup>

On Dec. 8, 1529, Anne Boleyn's father, viscount Rochford, was created earl of Wiltshire in England and earl of Ormond in Ireland.<sup>326</sup> He was entrusted now with a mission to Bologne during four months that Charles V and Pope Clement were there.<sup>327</sup>

"To the earl, however, were joined three colleagues. Stokesley, bishop elect of London, Lee, the king's almoner, and Bennet, doctor of laws; and these were accompanied by a council of divines, among whom was Thomas Cranmer."<sup>328</sup>

This mission being unsuccessful was followed by efforts to obtain opinions from learned men and celebrated universities.<sup>329</sup> In 1530, the King sent into France, William Paget,<sup>330</sup> to collect opinions of learned and experienced jurists on the question of the divorce.<sup>331</sup> On July 13, was a declaration from the archbishop and other members of the House of Lords to the Pope; his reply thereto was in September;<sup>332</sup> on the 16th of that month was the King's proclamation—

<sup>325</sup> 3 Hume's Engl., ch. 30, pp. 178, 179; 6 Lingard's Engl., ch. 3, pp. 156, 157; 1 Froude's Engl., ch. 3, p. 198 to 236.

<sup>326</sup> Miss Strickland's Queen's of Engl., vol. 4, p. 161, *note*.

<sup>327</sup> In justification of his choice, Henry is said to have observed "that no one could be more interested in the event of the mission than the man whose daughter would reap the fruit of it." 6 Lingard's Engl., ch. 6, p. 168. How Charles viewed him is stated in *Id.*, pp. 169, 170.

<sup>328</sup> *Id.*

<sup>329</sup> *Id.*, p. 170 to 172; 2 Turner's Hen. VIII, edi. 1827, pp. 314, 315; 2 Mackintosh's Engl., Phila. edi. 1831, p. 136 to 138; Sir H. Ellis's 3d series of Orig. Let., vol. 2, p. 167 to 170. Copies were distributed of the octavo volume which emanated from the King, and was printed by Berthelet, entitled 'A Glasse of the Truthe,' a dialogue between a lawyer and a doctor upon the subject of the divorce. *Id.*, p. 194 to 199.

<sup>330</sup> He sprang from a private family in Staffordshire, whence his father, a native of Wednesbury, in that county, migrated to London, where he obtained the office of Serjeant at Mace in the corporation. William was born in that city in 1506, and commenced his education in St. Paul's school (under Lilly), whence he was removed to Trinity Hall, in Cambridge. He became known to Gardiner, Bishop of Winchester; was received into his family; and after a time sent under his auspices to complete his education in the University of Paris, whence he returned again into the Bishop's house. Lodge's Portr., vol. 2, No. 12.

<sup>331</sup> "And rewarded him on his return with the appointment of a Clerk of the Signet, which was afterwards confirmed to him for his life." His employment in 1537 is mentioned in *Id.*

<sup>332</sup> 1 State Tr., p. 342 to 349; 6 Lingard's Engl., ch. 3, pp. 172, 173; 2 Turner's Hen. VIII, edi. 1827, p. 316; 1 Froude's Engl., ch. 4, p. 308 to 312.

"Forbidding any person to purchase from Rome or to publish anything prejudicial to his royal prerogative, or to the hindrance of his purposes."<sup>333</sup>

Yet when the King and Queen passed at Greenwich the Christmas of 1530, the matter of their divorce seems to have been still pending at Rome.<sup>334</sup>

Statutes of the parliament which began its session at Westminster on Jan. 16, in 22 Hen. VIII (1530-31), embraces 23 chapters;<sup>335</sup> whereof the fourth and fifth are in 1 'Statutes Revised.'<sup>336</sup> Lord Coke says:

"Of common right all the country shall be charged to the reparation of a bridge; and therewith agreeth 10 E. III, 28<sup>b</sup>—that a bridge shall be levied by the whole country, because it is a common easement for the whole country; and as to that point, the statute of 22 Hen. VIII, cap. 5th, was but an affirmance of the common law."<sup>337</sup>

During that same session of parliament which began in 1530-31, to-wit: on March 31, the Lord Chancellor, accompanied by Dr. Stokesley, bishop of London, and other lords, came into the Lower House 'respecting the divorce'; on which occasion Sir Brian Tuke read determinations of foreign universities, and books of doctors 'declaring the marriage unlawful'; and also read the proceedings at Oxford and Cambridge. Whereupon the King prorogued the parliament. An interview between lords of his council and the Queen ended with her being informed that the King gave her liberty to repair to his manor of Oking, or Estamstead, or the monastery of Bisham; she replied 'that to what place soever she removed, nothing could remove her from being the king's wife.' After this time (July 14, 1531) the King never saw her more:<sup>338</sup> the pope's letter to per-

<sup>333</sup> 2 Turner's Hen. VIII, edi. 1827, pp. 322, 323.

<sup>334</sup> Miss Strickland's Queens of Engl., vol. 4, p. 105.

<sup>335</sup> 3 Stat. of the Realm, p. 318 to 361.

<sup>336</sup> Edi. 1870, p. 387 to 391.

<sup>337</sup> Ld. Coke adds, "This is true, when no other is bound by the law to repair it; but he who hath the toll of the men or cattle which pass over a bridge or

causey, he ought to repair the same, for he hath the toll to that purpose, *et qui sentit commodum sentire debet et onus*; and therewith agrees 14 E. III, Bar 276;" 13 Rep. 33.

<sup>338</sup> 1 State Tr., p. 349 to 352; 6 Lingard's Engl., ch. 3, pp. 179, 180; 2 Turner's Hen. VIII, edi. 1827, pp. 318, 319. Miss Strickland says, she "never again beheld her husband or child. Her first

suade him<sup>339</sup>—and the motion in the House of Commons to petition him<sup>340</sup>—to take his wife again, and other proceedings (of the pope)<sup>341</sup> being all unavailing.

Statutes made in the session of parliament holden by prorogation at Westminster on the fifteenth day of January, in 23 Hen. VIII (1531-2), embrace thirty-four chapters;<sup>342</sup> whereof the fifth is "a general act concerning commissions of sewers to be directed in all parts within this realm,"

"From time to time where and when need shall require," "to such substantial and indifferent persons as shall be named by the *lord chancellor* and lord treasurer of England, and the two chief justices for the time being, or by three of them, whereof the *lord chancellor* to be one."

"It was resolved that these words in the said act *sc* 'according to your wisdoms and discretions,' are to be intended and interpreted according to law and justice, for every judge or commissioner ought to have *duos sales*, viz.: *salem sapientiæ, ne sit insipidus & salem conscientiæ, ne sit diabolus*. Also discretion, as it is well described, is *scire per legem quid sit justum*; and therefore the commissioners of sewers ought to pursue as well their commission, as the oath expressed in the said act of 23 H. VIII, which they take to execute their commission, in the same manner as it is there prescribed."<sup>343</sup>

Therewith agrees the description of discretion in 40 Eliz.:

"Notwithstanding the words of the commission give authority to the commissioners to do according to their discretions, yet their proceedings ought to be limited and bound with the rule of reason and law. For discretion is a science or understanding, to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to their wills and private affections; for as one saith *talīs discretio discretionem confundit*."<sup>344</sup>

abiding place was her manor of the More in Hertfordshire; she then settled at Amptill." 1 Queens of Engl., p. 105; 1 Froude's Engl., ch. 4, pp. 314, 315.

<sup>339</sup> Dated Jan. 25, 1532. 1 State Tr., p. 353 to 355; 2 Turner's Hen. VIII, ed. 1827, pp. 320, 321; 1 Froude's Engl., ch. 5, pp. 288, 289.

<sup>340</sup> 1 State Tr., p. 355.

<sup>341</sup> *Id.*, pp. 356, 356; 6 Lingard's Engl., ch. 3, pp. 184, 185; 1 Froude's Engl., p. 389.

<sup>342</sup> 3 Stat. of the Realm, p. 362 to 416.

<sup>343</sup> 7 Jac. 1, *Keighley's case*, 10 Rep., 140 a.

<sup>344</sup> *Rooke's case*, 5 Rep., 100 a (cited in 6 Rob. Pract. tit. 5, p. 639); *Case of the Isle of Ely*, 10 Rep., 141.



The 5th chapter, so construed, and chapters 9, 10, 13, 15 and 20 are in the 'Statutes Revised.'<sup>345</sup>

Among the last measures during *More's* chancellorship<sup>346</sup> are some as to divorcing<sup>347</sup> Henry from Catharine. Such opinions of universities and answers of theologians and canonists as had been presented to the House of Commons,<sup>347</sup> did not satisfy More's conscience. He apprehended bad consequences from those proceedings and is thought to have viewed with distrust such interference in ecclesiastical matters as Thomas Cromwell was then urging. Permission to resign the Great Seal was sought by him on the ground of illness; and on the 16th of May, 1532, was granted by the King with cordial acknowledgements of his services and promises of continued favour.<sup>348</sup>

During More's chancellorship *Hans Holbein*, who in Switzerland had become acquainted with Erasmus and taken his picture, brought it as a present, with letters of recommendation, to More.

"Holbein was kindly received by More, and was taken into his house at Chelsea. There he worked" (it has been said), "for near three years, drawing the portraits of Sir Thomas, his relations and friends. The King visiting the chancellor, saw some of those pictures and expressed his satisfaction. Sir Thomas begged him to accept which ever he liked—but he enquired for the painter, who was introduced to him. Henry immediately took him into his own service."<sup>349</sup>

In the 17th century, John Aubrey wrote:

"In the hall of Sir John Lenthall at Bessilslye, in Berks,<sup>350</sup> is an original of Sir Tho. and his father, mother, wife and children, done by Hans Holbein."<sup>351</sup>

<sup>345</sup> Edi. 1870, vol. I, p. 392 to 409.

<sup>346</sup> 2 Turner's Hen. VIII, edi. 1827, p. 323 to 326.

<sup>347</sup> There were printed some that were not presented to either House of Parliament. Sir H. Ellis's 3d series of Orig. Let., vol. 2, p. 223.

<sup>348</sup> "Causing the Duke of Norfolk, on introducing his successor, to say that he had been only allowed to retire at his own earnest entreaty, and obliging the

new chancellor to repeat the expression in the royal presence at the opening of Parliament." Foss's Biogr. Jurid.; 1 Froude's Engl., ch. 4, p. 338 to 340.

<sup>349</sup> 1 Walpole's Anecdotes of Painters, edi. 1786, p. 104 to 111.

<sup>350</sup> Besselsleigh, in Berks, is 6 miles from Oxford, and 60 from London. 1 Dugdale's Engl. and Wales, p. 155.

<sup>351</sup> 2 Aubrey's Letters, edi. 1813, p. 464.

Of Sir Thomas and his father Mr. Lodge has published engravings from the original of Holbein, to-wit: of Sir Thomas "in the collection of W. J. Lenthall, Esq.";<sup>352</sup> and of Sir Thomas's father in the Earl of Pembroke's collection.<sup>353</sup> Horace Walpole says:

"Holbein was equal to dignified character. He could express the piercing genius of More or the grace of Anne Boleyn.<sup>354</sup> Employed by More, Holbein was employed as he ought to be. This was the happy moment of his pencil; from painting the author, he rose to the philosopher, and then sunk to work for the King.<sup>355</sup> I do not know a single countenance into which any master has poured greater energy of expression than in the drawing of Sir Thomas More at Kensington. It has a freedom, a boldness of thought and acuteness of penetration that attest the sincerity of the resemblance. It is Sir Thomas More in the rigour of his sense, not in the sweetness of his pleasantry. Here he is the unblemished magistrate, not that amiable philosopher, whose humility neither power nor piety could elate, and whose mirth, even martyrdom could not spoil."<sup>356</sup>

The *ex*-chancellor More continued serene and cheerful.<sup>357</sup> As illustrating his integrity in his chancellorship, Mr. Roper says,

"That after the resignation of it he was not able sufficiently to find meat, drink, fuel, apparel and such other necessary charges; and that after his debts paid he had not, I know (his chain excepted), in gold and silver left him the value of one hundred pounds."<sup>358</sup>

*Thomas Audley*,<sup>359</sup> on May 30, 1532, became the possessor of the

<sup>352</sup> Lodge's *Portr.*, vol. 1, No. 7.

<sup>353</sup> *Id.*, No. 6.

<sup>354</sup> From the original of Holbein, in the Earl of Warwick's collection, there is an engraving of Queen Anne in *Id.*, No. 8.

<sup>355</sup> From the original of Holbein, in the Earl of Egremont's collection, there is an engraving of King Henry the Eighth in *Id.*, No. 16.

<sup>356</sup> 1 Walpole's *Anecdotes*, pp. 109, 110.

<sup>357</sup> 3 Hume's *Engl.*, ch. 30, p. 189.

<sup>358</sup> 1 Seward's *Anecdotes*, p. 58.

<sup>359</sup> Born (according to Morant) at Earl's Colne in Essex in 1488. If (as is believed) he went to one of the Universities, it was probably Cambridge. He

studied law at the Inner Temple, and in 1526 became autumn reader. He obtained a seat in the House of Commons in 1523 as member for Essex; and was Speaker of the Parliament of Nov., 1529, which was signalized by the fall of Wolsey, and the attack on the papal power. It was then the practice for the King to communicate with the Speaker and certain members of the House on subjects which he intended to come before them; and in these matters Audley was found a willing instrument. His services were rewarded by his being appointed in 1530 attorney for the Duchy of Lancaster, and in 1531 King's serjeant. Foss's *Biogr. Jurid.*

Great Seal with the title of Lord Keeper;<sup>360</sup> which was changed to that of Lord Chancellor in January 1533.<sup>361</sup>

*II. Character of ex-chancellor Warham, archbishop of Canterbury. For him, before and after his death, Aug. 23, 1532, expressions of regard by Erasmus.*

To Warham it was "a sorrowful thing to see how greedily inconstant men, and specially inexpert youth, falleth to new doctrines." So he wrote in 1521,<sup>362</sup> when Chancellor of the University of Oxford; a presidency terminated with his life. Attached as he was to the ancient system, and a supporter of the papal authority, he must, at a later period, have looked with an anxious eye on the King's proceedings. It could not be otherwise than grating to his feelings to be compelled in convocation to pass a grant with a preamble acknowledging the King 'to be the protector, and under God, the only supreme head of the church and clergy of England.'<sup>363</sup> When he had retired from all public business except that of his church, he made a protest against, and declared dissent from, statutes of the parliament begun Nov. 3, 1529.<sup>364</sup>

In his zeal for the church he may have been too great a persecutor of those who differed from him; but in other respects his character is admired. He was intimate with Erasmus, and, it is said, gave him the rectory of Aldington in Kent.<sup>365</sup> It is pleasant to read what is told in Mr. Green's delightful language:

"The letters which passed between the great churchman and the wandering scholar, the quiet, simple-hearted grace, which amidst

<sup>360</sup> And to do and execute all and everything in the Court of Chancery, Star-chamber and Council, as the Chancellor of England was wont to do and execute. Ch. 2, pp. 37, 38 of *Legal Judic. in Ch.*, ed. 1727.

<sup>361</sup> Jan. 26, *Id.*; Jan. 24, Foss's *Biogr. Jurid.*

<sup>362</sup> Sir H. Ellis's *Orig. Let.*, 3d series, vol. 1, p. 239 to 244; also p. 245 to 247.

<sup>363</sup> Foss's *Biogr. Jurid.*; 1 Froude's *Engl.*, ch. 4, pp. 282, 283.

<sup>364</sup> "So far as such statute or statutes be in derogation of the Pope of Rome or the Apostolic See, or be to the hurt, prejudice or limitation of the powers of the church, or shall tend to the subverting, enervating, derogating from or diminishing the laws, customs, privileges, prerogatives, preëminence or liberties of our Metropolitan Church of Canterbury." *Id.*, pp. 340, 341; Foss's *Biogr. Jurid.*

<sup>365</sup> Foss's *Biogr. Jurid.*

constant instances of munificence, preserved the perfect equality of literary friendship, the enlightened piety to which Erasmus could address the noble words of his preface to St. Jerome, confirm the judgment of every good man of Warham's day. The Archbishop's life was a simple one; and an hour's pleasant reading, a quiet chat with some learned new comer, alone broke the endless round of civil and ecclesiastical business. Few men realized so thoroughly as Warham the new conception of an intellectual and moral equality before which the old social distinctions of the world were to vanish away. His favorite relaxation was to sup among a group of scholarly visitors, enjoying their fun and retorting with fun of his own."—"But the scholar-world found more than supper or fun at the Primate's board. His purse was ever open to relieve their poverty. 'Had I found such a patron in my youth,' Erasmus wrote long after, 'I too might have been counted among the fortunate ones.' It was with Grocyn that Erasmus, on a second visit to England, rowed up the river to Warham's board at Lambeth, and in spite of an unpromising beginning, the acquaintance turned out wonderfully well. The Primate loved him, Erasmus wrote home, as if he were his father or his brother, and his generosity surpassed that of all his friends. He offered him a sinecure, and when he declined it, he bestowed on him a pension of a hundred crowns a year. When Erasmus wandered to Paris, it was Warham's invitation which recalled him to England. When the rest of his patrons left him to starve on the sour beer of Cambridge, it was Warham who sent him fifty angels. 'I wish there were thirty legions of them,' the Primate puns in his good-humoured way."<sup>366</sup>

Flattered by the compliments which he knew that Erasmus had paid him, Warham thus expresses his acknowledgments:

"Since through you I am to enjoy lasting fame, a boon denied to many great kings and commanders who have utterly vanished from the memory of mankind, unless that their names may be found in some dry catalogue,—I know not what in this mortal life I can offer you in return for the immortality you have conferred. I am overwhelmed when I think of the flattering mention you have made of me in conversation, in letters, and in the works you have given to the world. You would set me down as the most ungrateful of men if I did not shew a deep sense of your kindness, however unworthy I may be of the praises you have showered upon me."<sup>367</sup>

Till his death Warham continued in the enjoyment of private friendships and in the cultivation and patronage of literature. He died Aug. 23, 1532, in the house of his nephew, the archdeacon of

<sup>366</sup> Green's Short Hist., ch. 6, § 4, p. 318; Hist. of Engl. Peop., book 5, ch. 2, pp. 83, 84 of vol. 2, ed. 1879.

<sup>367</sup> 1 Campbell's Lives of Chancellors, ch. 26, pp. 441, 442 of 2d ed. (1846), pp. 410, 411 of Boston ed. 1874.

Canterbury, near that city; and was buried in a small chapel which he had built in the cathedral. He had been exceedingly liberal; expending 30,000 pounds in repairing and adorning the different episcopal houses of his see, and not always keeping as much as might reasonably be retained for his own purposes. On his death-bed, inquiring of his steward what money he had in his hands, and being answered only 30 pounds, he calmly replied, '*satis viatici ad cælum*'; 'that was enough to last till he got to heaven.'<sup>368</sup>

Although "the eulogies which Erasmus lavished on" Warham "while he lived, his praises of the primate's learning, of his ability in business, his pleasant humour, his modesty, his fidelity to friends may pass for" no more than "eulogies of living men are commonly worth," yet "it is difficult to doubt the sincerity of the glowing picture which he drew of him when death had destroyed all interest in mere adulation."<sup>369</sup> Writing to Charles Blunt, son of Lord Mountjoy, Erasmus says:

"I have this instant heard that that incomparable treasure of virtue and goodness, William Warham, has changed this life for a better. I lament my fate, not his; for he was truly my constant anchor. We had made a solemn compact together that we would have one common sepulchre; and I had no apprehension but that he, though he was sixteen years older than myself, would have survived me. Neither age nor disease took away from us this excellent man, but a fatality, not only to himself but to Learning, to Religion, to the State, to the Church. Though as Lord Archbishop of Canterbury, and Lord Chancellor of England, obliged to give audiences to ambassadors, and his time to suitors, yet he had still time enough not only to transact all his secular business, but to bestow a large portion of it upon study and religion. For he never lost a moment in hunting, in gaming, in idle talk, or in amusement of any kind. He occasionally received two hundred guests at his table, amongst whom were Bishops, Dukes and Earls; yet the dinner was always over within the hour. Himself seldom tasted wine, and when he was near seventy, he drank, and that very moderately, a weak liquor which the English call Beer. Though so sparing in his diet, he was always cheerful and lively in his conversation; and both before and after dinner preserved the same sobriety of behaviour. He joked himself, but with great pleasantry, and permitted it in others; yet he never allowed his jokes or those of his friends, to descend into personality and detraction, which he abhorred as much as any man can detest a

<sup>368</sup> Foss's Biogr. Jurid.

Hist. of Engl. Peop., book 5, ch. 2, p. 83

<sup>369</sup> Green's Short Hist., ch. 6, p. 318;

of vol. 2, edi. 1879.

serpent. One peculiarity he had which was something royal; he never dismissed any suitor from him dissatisfied or out of humour."<sup>370</sup>

The original portrait of Warham by Holbein is in the collection of the Archbishop of Canterbury.<sup>371</sup>

*12. Of Thomas Cromwell. His life before 1530, when he entered the King's service. His offices until Octo. 8, 1534, when he succeeded John Taylor as Master of the Rolls. Next year Cromwell was made Visitor-General of the monasteries.*

What is known of the parentage of Thomas Cromwell and his childhood<sup>372</sup> is consistent with the statement that his youth was one of roving adventure.<sup>373</sup> On the continent he mastered several foreign languages and became apt in the conduct of affairs. While employed at Antwerp as clerk or secretary of English merchants, he became acquainted with Sir Richard Gresham, father of the founder of the Royal Exchange.<sup>374</sup> Gresham had some correspondence with Cardinal Wolsey.<sup>375</sup> Cromwell, after being admitted to Gray's Inn in 1524, seems to have been "present as a soldier at the sacking of" Rome "in May, 1527."<sup>376</sup> However that may be,<sup>377</sup> it appears that before 1527 Cromwell had married and become possessed of

<sup>370</sup> 3 Seward's Anecdotes, pp. 78, 79. A short time afterwards, and perhaps to a different person, was written the letter in 1 Campbell's Lives of Chancellors, pp. 439, 440 of 2d edi. (1846), pp. 409, 410 of Boston edi. 1874.

<sup>371</sup> From it an engraving by W. T. Mote is in Lodge's Portr., vol. 1, No. 9.

<sup>372</sup> It is said that he was born at Putney towards the end of the fifteenth century, and that his father carried on there the business first of a blacksmith and then of a brewer. 7 Dugdale's Engl., p. 131; Foss's Biogr. Jurid.; the mother of Thomas Cromwell was aunt of Nicholas Glossope. In a letter written, in 1533, by Nicholas Glossope, he says to T. C., "my mystres, yowre mother was my auntte." Thomas Allkoke's wyffe, of Werkworth on the Poke, was

my godmother and my auntte bothe." Sir H. Ellis's 3d series of Orig. Let., vol. 2, p. 237 to 239. After learning Latin, T. C. left his mother and her second husband. Lodge's Portr., vol. 1, No. 11.

<sup>373</sup> 6 Lingard's Engl., ch. 3, pp. 175, 176; Green's Short Hist., ch. 6, § 6, p. 341; Hist. of Engl. Peop., book 5, ch. 4, vol. 2, edi. 1879, p. 143; 2 Froude's Engl., ch. 6, pp. 110, 111.

<sup>374</sup> Foss's Biogr. Jurid.

<sup>375</sup> A letter from him to the Cardinal is in Sir H. Ellis's 3d series of Orig. Let., vol. 2, p. 80 to 82.

<sup>376</sup> Foss's Biogr. Jurid. See also § 6, ante, p. 938 note.

<sup>377</sup> 2 Froude's Engl., ch. 126, p. 112, note.

considerable estate,<sup>378</sup> and was in Wolsey's service,<sup>379</sup> and that he was in it at Wolsey's fall.<sup>380</sup> "Of the hundreds of dependents who waited on the Cardinal's nod," he is one of very few "who clung faithfully to him at the last." Cromwell had become "a busy and influential member of the Commons"; and to his efforts in Parliament, "Wolsey owed his escape from impeachment"; "he being earnest in his master's behalf, was reputed the most faithful servant to" him "of all others, and was generally of all men highly commended."<sup>381</sup>

Almost immediately upon, if not before, Wolsey's death, Cromwell was taken into the king's service.<sup>382</sup> He received in 1532, April 14, the place of master and treasurer of the king's jewels; July 16, the profitable office of clerk of the Hanaper, with an annual rent of £40; and in 1533, April 12, the more important one of chancellor of the Exchequer. He had been the king's principal secretary before October 6, 1534. Then John Taylor, who (as stated in § 7, p. 969) held the office of Master of the Rolls for above seven years, resigned it<sup>383</sup> to enable the King to invest Cromwell with this place.

<sup>378</sup> His will dated July 12, 1529 (in 21 Hen. VIII), gives considerable legacies to his son Gregory Cromwell, and his daughter Ann; his "little daughter Grace" was also living when it was first written. He mentions his sister Elizabeth Wellyfed, and children of hers, his sister Katharine, and his wife's sister Joan, wife to John Williamson; his mother-in-law Mercy Prior; brother-in-law John Willyams, and Joan his wife, and his (the testator's) nephews, Richard Willyams and Walter Will-yams. 2 Froude's Engl., Appendix to ch. 6, p. 116 to 124.

<sup>379</sup> Lodge's Portr., vol. 1, No. 11; Sir H. Ellis's 3d series of Orig. Let., vol. 1, pp. 332, 333, vol. 2, p. 107 to 116, p. 138 to 146, pp. 155, 156, p. 159 to 166.

<sup>380</sup> Stephen Vaughan is anxious to know how Cromwell is "intreated in the sudden overthrow of my Lord his

master." *Id.*, p. 171. What he did appears in 2 Turner's Hen. VIII, ed. 1827, p. 284, and elsewhere.

<sup>381</sup> Cavendish, ch. 18; 4 Harl. Miscel., 540 to 547; Sir H. Ellis's Orig. Let., 3d series, vol. 2, p. 181 to 188; 3 Seward's Anecdotes, p. 101; Lodge's Portr., vol. 1, No. 11; 2 Froude's Engl., ch. 6, p. 112 to 114; Green's Short Hist., p. 342; Hist. of Engl. Peop., book 5, ch. 4, vol. 2, p. 144.

<sup>382</sup> Sir H. Ellis's 3d series of Orig. Let., vol. 2, p. 194 to 199, p. 204 to 226, p. 231 to 244, p. 249 to 274, p. 276 to 289, p. 295 to 314, p. 321 to 323, p. 334, *et seq.*, vol. 3, p. 1 to 19, p. 31 to 42, p. 44 to 52, p. 71, p. 74; Foss's Biogr. Jurid.

<sup>383</sup> Soon after which time Taylor is supposed to have died; there being before the end of the year a successor of him in another office. Foss's Biogr. Jurid.

He was appointed to it on the 8th; and next year was made visitor-general of the monasteries. Out of the plunder he obtained such grants as occasioned, and perhaps justified, the imputation that avarice had a share in prompting his energetic proceedings.<sup>384</sup>

13. *In 1532, in September, Anne Boleyn made Marchioness of Pembroke; in October she accompanied King Henry to Calais as the guest of the King of France; Jan. 25, 1532-3, Henry married her. Other proceedings in 1533 as to her and Katharine of Arragon. Statutes of Parliament in 24 Hen. VIII (1532-3).*

In 1532 it was arranged that the Kings of England and France should meet at Calais in the fall. July 22, the ambassador of France writes, "If our sovereign wishes to gratify the King of England he can do nothing better than invite Madam Anne to Calais and entertain her there with great respect." This letter was written from Ampthill, where Henry then was. Mr. Froude says:

"Anne Boleyn was with him; she now, as a matter of course, attended him everywhere. Intending her, as he did, to be the mother of the future heir to his crown, he preserved what is technically called her honour, unimpeached and unimpaired. In all other respects she occupied the position and received the homage due to the actual wife of the English sovereign; and in this capacity it was the desire of Henry that she should be acknowledged by a foreign prince."

Anne was duly invited. She was, on Sept. 1, at Windsor, raised to the peerage by the title of Marchioness of Pembroke; and on Octo. 14, embarked at Dover for France; Henry on the same day making on her a settlement of lands.<sup>385</sup>

Thomas Cranmer returned from the continent to England in Nov.

<sup>384</sup> *Id.*; Lodge's Portr., vol. I, No. 11.

<sup>385</sup> Sir H. Ellis's 3d series of Orig. Letters, vol. 2, p. 245; 2 Turner's Hen. VIII, edi. 1827, pp. 327, 328; Miss Strickland's Queens of Engl., vol. 4, p. 165 to 169; 1 Froude's Engl., ch. 5, p. 359, *et seq.* The settlement of that date is recited and confirmed in and by an act of 25 Hen. VIII (1534) "concerning the Queen's jointure." 3 Stat.

of the Realm, 479. The latter act is recited in an act of 27 Hen. VIII (1535-6) "concerning the assurance of the manor of Hasyllegh unto the Queen's Grace *for term of her life.*" *Id.*, p. 598. In that same session of 27 Hen. VIII (1535-6) is "an act concerning the assurance of the Lordship and manor of Collyweston to the Queen's Grace *for term of her life.*" *Id.*, p. 621.



1532, and was immediately named to succeed Warham in the See of Canterbury.<sup>386</sup> Considering that Henry's "inclination to the person of Anne Bullen" was with the "desire to become the father of an heir with *unquestionable title* to the crown,"<sup>387</sup> it is remarkable that he did not wait for Cranmer to be consecrated Archbishop, and pronounce a sentence of divorce. But two months before such consecration,<sup>388</sup> to-wit: in 1532-3, on Jan. 25, he married Anne;<sup>389</sup> and the marriage was 'kept secret' about two months and a half.<sup>390</sup>

"On Easter eve, which in this year was April 12, the king openly solemnized again his marriage with Anne Boleyn, and she went in state as his queen."<sup>391</sup>

Of the sixteen chapters of statutes made in the session of parliament holden by prorogation at Westminster on Feb. 4, in 24 Hen. VIII,<sup>392</sup> chapters eight and twelve remain in 1 'Statutes Revised.'<sup>393</sup> The latter (ch. 12) is "an act that the appeals in such cases as have been used to be pursued to the see of Rome, shall not be from henceforth had nor used within the realm."<sup>394</sup> Thus was taken away the chance which otherwise Katharine would have had through an appeal to Rome. On April 28th the King issued from Greenwich letters, announcing the time and place for Anne's coronation as Queen.<sup>395</sup>

<sup>386</sup> Lodge's Portr., vol. 2, No. 8.

<sup>387</sup> Lodge's Portr., vol. 1, No. 16.

<sup>388</sup> Cranmer's consecration was on March 30, 1533. Lodge's Portr., vol. 2, No. 8; 6 Lingard's Engl., ch. 3, p. 190 to 193.

<sup>389</sup> 1 Harl. Miscel., edi. 1808, p. 189; 3 Hume's Engl., ch. 30, pp. 190, 191; 6 Lingard's Engl., ch. 3, pp. 189, 190; Miss Strickland's Queens of Engl., vol. 4, p. 171; 1 Froude's Engl., ch. 5, pp. 384, 385: Cranmer was not present at the marriage, and knew not of it for a fortnight. 2 Turner's Hen. VIII, edi. 1827, p. 331.

<sup>390</sup> 1 Froude's Engl., ch. 5, p. 395; 2 *Id.*, ch. 7, pp. 125, 126. As Mr. Froude says, it was kept secret, "with

the intention that it should be divulged by the King of France to the Pope when he met him at Marseilles' (*Id.*), it may be well to observe that Clement, who reached Marseilles Octo. 11, entered it the 12th; and Francis arrived on the 13th. 2 Turner's Hen. VIII, edi. 1827, p. 341, note 109.

<sup>391</sup> *Id.*, p. 335; Miss Strickland's Queens of England, vol. 4, p. 172.

<sup>392</sup> 3 Stat. of the Realm, p. 417 to 435.

<sup>393</sup> Edi. 1870, p. 409 to 414.

<sup>394</sup> 3 Stat. of the Realm, p. 427 to 429; 1 Froude's Engl., ch. 5, p. 399 to 410.

<sup>395</sup> To wit: at Westminster 'upon the fest of Pentecost.' Sir H. Ellis's 3d series of Orig. Let., vol. 2, pp. 274, 275.

Without any allegation of moral fault by Katharine, since the ceremony of marriage between her and Henry, and after their cohabiting more than twenty years, there was, by or before archbishop Cranmer, the *form* of a proceeding for divorce of Henry from Katharine, to give whatever support it could to the marriage consummated between him and Anne. In Bedfordshire against Katharine residing at Ampthill,<sup>396</sup> and cited to appear at Dunstable,<sup>397</sup> Cranmer there on the 23d of May (1533), pronounced sentence declaring that the marriage between her and King Henry was and is null and invalid; and separating and divorcing them from each other.<sup>398</sup>

The same archbishop, five days afterwards, "gave at Lambeth a judicial confirmation to Henry's union with Anne Boleyn."<sup>399</sup>

In June that same Archbishop was, on the first, crowning Anne Queen of England,<sup>400</sup> and after the coronation ceremonies<sup>401</sup> and festivities were over, was on the 17th writing lightly of sentences against men 'to go unto the *fire*'; such sentences being because they *thought it not necessary to be believed* as an article of faith *that there is the very corporeal presence of Christ* within the host and sacrament of the altar!<sup>402</sup>

In July might be seen on church doors the proclamation that Katharine was no more to be called Queen of England, but to be called Princess Dowager;<sup>403</sup> in the same month (July 3) her reception at Ampthill of Lord Mountjoy and the state commissioners was "noble, spirited and like a Queen."<sup>404</sup> She was not allowed to reside

<sup>396</sup> 46 miles from London.

<sup>397</sup> 33 miles from London.

<sup>398</sup> Sir H. Ellis's 3d series of Orig. Let., vol. 2, p. 276; 1 State Tr., pp. 359, 360; 2 Robertson's Charles V, pp. 229, 230 of Boston ed. 1857; 2 Turner's Hen. VIII, ed. 1827, pp. 335, 336; 6 Lingard's Engl., ch. 3, p. 194 to 196; 2 Mackintosh's Engl., Phila. ed. 1831, p. 144; 1 Froude's Engl., ch. 5, p. 418 to 422.

<sup>399</sup> 2 Turner's Hen. VIII, ed. 1827, p. 336; 6 Lingard's Engl., ch. 3, p. 196; 2 Mackintosh's Engl., Phila. ed. 1831, p. 144; Miss Strickland's Queens of

Engl., vol. 4, p. 172.

<sup>400</sup> 6 Lingard's Engl., ch. 3, p. 197; Miss Strickland's Queens of Engl., vol. 4, p. 172 to 179; 1 Froude's Engl., ch. 5, p. 422 to 430.

<sup>401</sup> Of which there is a relation in 2 Turner's Hen. VIII, ed. 1827, p. 336 to 338.

<sup>402</sup> Sir H. Ellis's 1st series of Orig. Let., vol. 2, p. 40; 2 Turner's Hen. VIII, ed. 1827, p. 528, note 79; 1 Froude's Engl., ch. 5, pp. 446, 447.

<sup>403</sup> *Id.*, p. 437.

<sup>404</sup> *Id.*, p. 438 to 444; 6 Lingard's Engl., ch. 3, pp. 197, 198.

much longer at Ampthill.<sup>405</sup> Her residence was transferred that summer to Bugden (since called Buckden).<sup>406</sup>

14. *In 1533, Sept. 7, birth of Princess Elizabeth; Dec. plan of the English council as to the pope. In Jan., 1533-4, Parliament met; representation by English to French cabinet. Statutes of 25 Hen. VIII (1533-4); the pontiffs proceedings; Statutes of 26 Hen. VIII. Mr. Turner's observations upon the pope and Henry.*

In a letter dated "at my Lord's manor of Greenwich, "the vii day of September, in the xxvth year of my said Lord's reign,"<sup>407</sup> was announced the "bringing furthe of a Prince." That Prince was Elizabeth.<sup>408</sup>

"The English government in December met in council to deliberate on its future conduct towards the pope and hierarchy, and settled its plan in nineteen resolutions."<sup>409</sup>

In 25 Hen. VIII (1533-4), Jan. 15, a session of parliament was holden at Westminster by prorogation.<sup>410</sup> A strong representation from the English to the French cabinet was made on the 27th. Then the Duke of Norfolk wrote:

<sup>405</sup> Between two hills, in the centre of Bedford county, "is an obelisk of Portland stone, forming a receptacle for a pump; and also a Gothic cross, which was erected in 1744 to the memory of Catharine of Arragon by the earl of Upper Ossory, who was then proprietor of Ampthill Park;" which afterwards became the seat of Lord Holland." It is said, "the old castle in which Queen Catharine resided, stood on a more elevated ground than the present mansion, which is a magnificent structure, with wings, and a flight of steps leading to a handsome hall; the park, which is now united with that of Houghton, is spacious, and presents several most delightful prospects. At the entrance of Ampthill Park there is a pear tree, under which it is reported that Sir Philip Sydney wrote a part of his *Arcadia*." 1 Dugdale's *Engl. and Wales*, pp. 30, 31. Ampthill Park was in 1864 Lord Wens-

leydale's country residence. See near the end of this volume Appendix A.

<sup>406</sup> Miss Strickland mentions this "palace belonging to the Bishop of Lincoln, four miles from Huntingdon;" and gives an account of what occurred until Katharine was "taken to Kimbolton castle, where she commenced the dreary new year of 1535 with her comforts greatly diminished." *Queens of Engl.*, vol. 4, p. 108 to 113. Kimbolton is about 10 miles from Huntingdon.

<sup>407</sup> Lodge's *Portr.*, vol. 1, No. 8.

<sup>408</sup> 6 Collyer's *Engl.*, ch. 2, p. 214; 2 Turner's *Hen. VIII*, edi. 1827, pp. 339, 340, note 103; 2 Mackintosh's *Engl.*, Phila. edi. 1831, p. 160; Miss Strickland's *Queens of Engl.*, vol. 4, p. 101; 2 Froude's *Engl.*, ch. 7, p. 149.

<sup>409</sup> 2 Turner's *Hen. VIII*, edi. 1827, p. 345.

<sup>410</sup> 3 Stat. of the Realm, p. 436.

"I wish the pope had been otherwise counselled, for I assure you, that things are in such a train here, that if he will continue in his pertinacity to favor the emperor more than our two masters, and from fear or favor of him to suppress the equity of our king's just cause, he will give irrevocable occasion to him, and all his subjects, to seek every means that can be thought to impugn his See and authority, which he usurps so unjustly. Many questions and conclusions have been recently raised by famous clerks, prelates and doctors of this kingdom, greatly to the pope's prejudice. Among others they affirm, that *he has no authority beyond his own diocese of Rome*; and that *what pontiffs have assumed over all Christendom has no force but from the sufferance of the princes whom, by the color of sanctity, they have blinded*."<sup>411</sup>

Of statutes made in 1533-4 there are thirty-four chapters;<sup>412</sup> whereof ch. 5 (of buggery) is remarked upon in 12 Rep., 36; and other chapters are mentioned below.<sup>413</sup> Chapter 19<sup>414</sup> is "an act for the

<sup>411</sup> 2 Turner's Hen. VIII, edi. 1827, p. 345, and notes.

<sup>412</sup> 3 Stat. of the Realm, p. 436 to 491.

<sup>413</sup> As to Elizabeth Barton there may be reference to Sir H. Ellis's 3d series of Orig. Let., vol. 2, pp. 136, 137, p. 289 to 295, p. 314 to 319; 2 Turner's Hen. VIII, edi. 1827, p. 367 to 373; and 2 Mackintosh's Engl., Phila. edi. 1831, pp. 149, 150.

Ch. 12, in 3 Stat., p. 446 to 451, is "an act concerning the attainder of Elizabeth Barton and others;" in the margin are these words:

"Recital of the divorce between the King and Queen Katherine, his first wife, widow of his brother, Prince Arthur; pretended trances and revelations of Elizabeth Barton at the instigation of certain persons for the purpose of suggesting that such divorce was displeasing to heaven; and of rendering the King odious and putting his life and crown in danger."—"Sermons, &c., setting forth the said pretended revelations with a view to the succession of the Lady Mary, issue of the said Queen Katherine."—"Supporters of the said pretended revelations after the confessions of their falsity by the said Eliz. Barton."—"The said Elizabeth Barton and her abettors named, declared to be convicted and attainted of high treason."—"Proclamation of this act; and re-

quiring all persons to deliver up any books containing such revelations, &c." "All persons not attainted by this act shall be acquitted of all penalties on account of any misprisions, &c., with respect to such pretended revelations."

Whether within Stat. 25 H. VIII, ch. 12, there had been a counterfeiting the great seal was in 4 Jac. I a question in *Leak's* case. 12 Rep., 15.

Ch. 14 (3 Stat., pp. 454, 455) is "an act for punishment of heresy." In the margin of sections 5, 6, 7, are the following words: 5. "No licenses from the Pope to preach, &c.;" 6. "Persons indicted or accused of heresy shall be committed to the ordinaries, and openly tried; and being convict, shall abjure or do penance; or, upon refusal or relapse, *shall be burned by the lay-power*;" 7. "Speaking, &c., against the Pope or his decrees, &c., declared not to be heresy." 3 Inst., ch. 5, p. 39 to 43; 12 Rep., 57.

Ch. 15 is "an act for printers and binders of books. In the margin of § 4 are these words: "Lord Chancellor, &c., may regulate the price of books and binding." 3 Stat., p. 456.

<sup>414</sup> *Id.*, pp. 460, 461.

submission of the clergy to the King's majesty." Ch. 20<sup>415</sup> is "an act restraining the payment of annates, &c.;" ch. 21<sup>416</sup> is "an act for the exoneration from exactions paid to the See of Rome;" and ch. 22<sup>417</sup> is "an act for the establishment of the King's succession." In the margin of sections of this (22d) chapter are the following words:

§ 1. "The marriage of the King and Lady Katherine, widow of his brother Prince Arthur, declared void and their separation valid; and she shall be termed only dowager to Prince Arthur."—"The marriage of the King and his Queen Anne declared valid."

§ 2. "Prohibited degrees of marriage."—"None can dispense with God's law."—"None shall marry within the prohibited degrees, &c."

§ 3. "Persons already so married shall be separated by the sentence of the ordinary only, without any appeal to Rome, &c."

§ 4. "The King's issue by Queen Anne declared his lawful children"—"Limitation of the crown first to the King's sons and their heirs."—"For default of sons then to the Princess Elizabeth, and the King's other issue female."

§ 5. "For proclamation of this act."—"Any person who shall maliciously do anything by writing, &c., to the peril of the King, or to the prejudice of his marriage with Queen Anne, or of the issue inheritable to the crown under this act, declared to be guilty of High Treason."

§ 6. "Persons committing such offences, by word only, declared to be guilty of misprision of treason."

§ 7. "Such offenders shall not have any privilege of sanctuary."

§ 8. "Upon the King's demise, issue male under 18, or female unmarried under 16, shall be under the guardianship of their mother and a council."—"Penalty on all opposers thereof—High Treason."

§ 9. "All subjects shall be sworn to performance of this act, on pain of misprision of treason."

§ 10. "What marriages within this act."

Chapter 25 is "an act concerning the Queen's jointure";<sup>418</sup> and ch. 28 is "an act for the Lady Dowager."<sup>419</sup>

<sup>415</sup> *Id.*, p. 462 to 464.

<sup>416</sup> *Id.*, p. 464 to 471. <sup>417</sup> *Id.*, p. 471.

<sup>418</sup> Confirming letters patent; one dated at Westminster Octo. 14th, in 24 Hen. VIII, to the King's "most dear and entirely beloved wife, Queen Anne, by the name of his cousin Anne, Marquess of Pembroke;" another patent dated at Westminster July 2, in 24 Hen. VIII, to her "by the name of Lady Anne Rocheford;" another patent dated at

Westminster June 30, in 24 Hen. VIII, "by the name of his cousin Anne Rocheford;" another dated at Westminster 21 March, in 25 Hen. VIII, to "the said Queen Anne;" and another to her at Westminster 22 March, in 22 Hen. VIII. 2 Stat. of the Realm, pp. 479, 480.

<sup>419</sup> The marriage with Prince Arthur being held good, the lady Katharine was to be called and reported, 'Princess Dowager to Prince Arthur.' *Id.*, p. 484.

Chapters ten, nineteen, twenty and twenty-one are in 1 'Statutes Revised.' <sup>420</sup>

On March 23, 1533-4, "the pontiff chose to yield to the imperial cardinals in his concistory, and to place himself in direct battle against the parliament and the king of England by pronouncing a final sentence that Catherine's marriage was valid and canonical; that Henry was bound to cohabit with her as his wife; that he should be compelled to do so; that all molestations against this marriage were unlawful; and that he should be forever silent against it." <sup>421</sup>

In 1534, Pope Clement died, Sept. 25, and was succeeded by Paul III, who followed in his steps. <sup>422</sup> Soon there were decisive measures by the English parliament. Among the twenty six chapters of statutes made in its session holden by prorogation at Westminster on the third day of November, in 26 Hen. VIII (1534), <sup>423</sup> are the following:

Ch. 1. "An act concerning the King's Highness to be supreme head of the Church of England, and to have authority to reform and redress all errors, heresies and abuses in the same."

Ch. 2. "An act ratifying the oath that every of the King's subjects hath taken and shall hereafter be bound to take, for due observation of the act made for the surety of the succession of the King's Highness in the crown of the Realm."

Ch. 3. "An act concerning the payment of first fruits of all dignities, benefices and promotions spiritual; and also concerning one annual pension of the tenth part of all the possessions of the Church, spiritual and temporal, granted to the King's Highness and his heirs." <sup>424</sup>

Ch. 13. "An act whereby divers offences be made high treason, and taking away all sanctuaries for all manner of high treasons." <sup>425</sup>

Ch. 14. "An act for notation and consecration of suffragans within this realm."

Ch. 17. "An act that no farmers of spiritual prisons shall be compelled or charged to pay for their lessors first fruits or year's pension of the tenth granted by the King's Highness."

Ch. 22. "An act concerning the attainder of the Bishop of Rochester and others."

Ch. 23. "An act concerning the attainder of Sir Thomas More, Knight."

Chapters three, fourteen and seventeen are in 1 'Statutes Revised.' <sup>426</sup>

<sup>420</sup> Edi. 1870, p. 415 to 436.

<sup>421</sup> 2 Turner's Hen. VIII, edi. 1827, pp. 346, 347.

<sup>422</sup> *Id.*, pp. 348, 344.

<sup>423</sup> 3 Stat. of the Realm, p. 492 to 530.

<sup>424</sup> As to its effect see 12 Rep., 45.

<sup>425</sup> Noticed in *Id.*, 6.

<sup>426</sup> Edi. 1870, p. 437 to 450.

Upon the statutes so made in 26 Hen. VIII and the preceding session, there are observations by Sir James Mackintosh, and others.<sup>427</sup> Mr. Turner says:

"Religion was verbally connected with the discussions and purposes of the pope and Henry, but had really no influence with either in the objects, conduct or termination of the contest. Both were strict catholics at its beginning and at its end. Both hated, and at that time equally persecuted, the reformers. Human passions and worldly interests commenced, continued and decided it. If Francis had driven Charles out of Italy, Henry would have had his divorce, and the pope have remained the supreme head and the honored sovereign of the English church, till some other convulsion overthrew his dominion."<sup>428</sup>

15. *Under what forms of law Lord Chancellor Audley and his co-commissioners caused the deaths of Bishop Fisher and ex-chancellor More.*

Notwithstanding what is said in 2 Turner's Hen. VIII, edi. 1827, ch. 27, p. 377, *et seq.*, the author of the present work considers that under acts of the Parliaments of 25 and 26 Hen. VIII (1533-4 and 1534), there was such tyranny as should *never* be permitted by a people who have a *constitutional* government.

"Even the refuge of silence was closed by a law more infamous than any that has ever blotted the statute book of England. Not only was thought made treason, but men were forced to reveal their thoughts, on pain of their very silence being punished with the penalties of treason."<sup>429</sup>

<sup>427</sup> 2 Mackintosh's Engl., Phila. edi. 1831, p. 147 to 150. As to the manner of executing the statutes, there may be reference to letters in Sir H. Ellis's 3d series: From Edward Lee, Archbishop of York, to Hen. VIII, dated Bishops Thorpe, June 13, 1535, vol. 2, p. 324 to 332; John, Bishop of Lincoln, to Secretary Cromwell, dated Woburn, June 25. *Id.*, pp. 335, 336. Archbishop Lee, July 1, 1535, and Aug. 8, 1535. *Id.*, p. 337 to 346; Sir Piers Dutton to the Lord Privy Seal from Dutton, Sept. 23. *Id.*, pp. 350, 351; Archbishop Lee to the King from Cawood, Jan. 14. *Id.*, p. 372 to 378;

Richard Croke from Bugby, March 28. *Id.*, vol. 3, p. 3 to 6; Archbishop Cranmer from Forde, Aug. 26. *Id.*, p. 23 to 31; Robert Southwell. *Id.*, pp. 95, 96.

<sup>428</sup> 2 Turner's Hen. VIII, edi. 1827, p. 373 to 376.

<sup>429</sup> Green's Short Hist., ch. 6, § 6, p. 350; Hist. of Engl. Peop., book 5, ch. 4, vol. 2, edi. 1879, p. 165. Speaking of 'the charity and devotion of the brethren of the Charter-house,' Mr. Green says,

"After a stubborn resistance they had acknowledged the royal supremacy, and taken the oath of submission prescribed

Now the Lord Chancellor *Audley* performed an important part in "homicides committed by the instrumentality of legal process." For entertaining an *opinion* or *scruple*, and declining to take a certain oath, men were by that Lord Chancellor and his co-commissioners compelled to die—; to die after most discreditable proceedings by those commissioners under forms of law.<sup>430</sup> Richard Rich has upon his evidence in support of the prosecution against Bishop Fisher been deemed infamous, but if his evidence of the conversation between him and the Bishop be true, and the report of it and of what was held at the Bishop's trial be accurate, then the conduct of the King and of the Lord Chancellor *Audley* and his co-commissioners was more infamous than that of Rich.<sup>431</sup>

"The next of" the King's "deeds of blood has doomed his name to everlasting remembrance. The fate of Sir Thomas More was unequalled by any scene which Europe had witnessed since the destruction of the best and wisest of the Romans who wielded the imperial sceptre of the West."<sup>432</sup>

Interrogatories to More and his answers (State Papers, Hen. VIII, vol. 1, p. 432) are reprinted in Sir James Mackintosh's history.<sup>433</sup> Many observations have been made on More's case.<sup>434</sup> Lord Campbell states it briefly thus:

by the act. But by an infamous construction of the statute, which made the denial of the supremacy treason, the refusal of satisfactory answers to official questions as to a conscientious belief in it was held to be equivalent to open denial." *Id.*, p. 169.

<sup>430</sup> How interrogatories to Bishop Fisher were answered, appears in State Papers Hen. VIII, vol. 1, p. 431; 2 Mackintosh's Engl., Phila. edi. 1831, pp. 310, 311; 7 Coll. Engl., p. 6, pp. 17, 18; 3 Hume's Engl., ch. 30, p. 197, pp. 210, 211; 6 Lingard's Engl., ch. 3, p. 209 to 220; Campbell's Lives of Chancellors, ch. 34, vol. 1, pp. 606, 607 of vol. 1, 2d edi. (1846), pp. 92, 93 of vol. 2, Boston edi. 1874.

<sup>431</sup> 7 Coll. Engl., p. 18; 3 Hume's Engl., ch. 30, p. 211; 6 Lingard's Engl.,

ch. 3, p. 221. Of the Bishop's trial on the 17th of June, 1535, there is an account in 1 State Tr., p. 396 to 408. Lord Campbell's comments are in Lives of Chancellors, ch. 34, pp. 608, 609 of 2d edi. (1846), p. 93 to 96 of vol. 2, Boston edi. 1874. Bishop Fisher "was beheaded June 22, 1535, in the 80th year of his age." Lord Herbert says that "the Pope Paul III) sent him a cardinal's hat, but, unseasonably, his head being off." *Id.*, p. 408; Seward's Anecdotes, vol. 4, pp. 115, 116.

<sup>432</sup> 2 Mackintosh's Engl., Phila. edi. 1831, p. 151.

<sup>433</sup> *Id.*, p. 311 to 314.

<sup>434</sup> 7 Coll. Engl., p. 19; 3 Hume's Engl., ch. 30, pp. 211, 212; 6 Lingard's Engl., ch. 3, p. 222 to 224; 2 Mackin-



"He implicitly yielded to the law regulating the succession to the Crown; and he offered no active opposition to any other law;—only requiring that, on matters of *opinion*, he might be permitted to remain silent."<sup>435</sup>

After being a prisoner in the Tower from about April 1534, he was arraigned on May 7, 1535.<sup>436</sup> The court, being sensible of his weakness, ordered a chair to be brought, wherein he might seat himself. After being seated he said, as to the first crime objected—being 'an enemy, out of stubbornness of mind, to the King's second marriage':

"I confess I always told his Majesty my opinion according to the dictates of my conscience, which I neither ever would, nor ought to have concealed; for which I am so far from thinking myself guilty of high treason, that on the contrary, being required to give my opinion by so great a prince in an affair of so much importance, upon which the peace of the kingdom depended, I should have basely flattered him and my own conscience, had not I spoke the truth as I thought."—"If it can be an offence to tell one's mind freely when his sovereign puts the question to him, I suppose I have been sufficiently punished already, for the fault, by the great afflictions I have endured by the loss of my estate and my tedious imprisonment."<sup>437</sup>

As to the *second* charge—that in violation of the act made in the last parliament, he being a prisoner and twice examined, would not out of a malignant, perfidious, obstinate and traitorous mind, tell

tosh's Engl., Phila. edi. 1831, p. 152, *et seq.*; Green's Short Hist., ch. 6, p. 351; Hist. of Engl. Peop., book 5, ch. 4, vol. 2, N. Y. edi. 1879, p. 167 to 170.

<sup>435</sup> Lives of Chancellors, ch. 33, pp. 589, 590 of vol. 1, 2d edi. (1846), p. 76 of vol. 2, Boston edi. (1874.) Utopus "judged it not fit to decide rashly any matter of *opinion*, and he deemed it foolish and indecent to *threaten and terrify another for the purpose of making him believe what did not appear to him to be true.*" *Id.*, p. 595 of former, p. 82 of latter.

<sup>436</sup> Lord Campbell observes that "the arraignment took place on the 7th of May, but the trial was postponed till the 1st of July, in the hope of strengthening

the case for the crown;" and that, "on the morning of the trial, More was led on foot in a coarse woolen gown through the most frequented streets from the tower to Westminster Hall." Lives of Chancellors, ch. 33, vol. 1, p. 578 of 2d edi. (1846), vol. 2, p. 65 of Boston edi. 1874. Much weakened by imprisonment, he went into court leaning on his staff, but appeared with a cheerful and composed countenance. The persons to try him were Sir Thomas Audley, lord chancellor, Thomas, duke of Norfolk, Sir John Fitz James, lord chief justice, Sir John Baldwin, Sir Richard Leicester, Sir John Port, Sir John Spelman, Sir Walter Luke, Sir Anthony Fitz-Herbert. 1 State Tr., 387.

<sup>437</sup> *Id.*, p. 388.

them his opinion whether the King was supreme head of the church or not—

"Then I protested that I had never said nor done anything against it" (the act;) neither can any one word or action of mine be alleged, or produced, to make me culpable."

The Attorney-General (*Christopher Hales*):

"Sir Thomas, though we have not one word or deed of yours to object against you, yet we have your silence, which is an evident sign of the malice of your heart; because no dutiful subject being lawfully asked this question, will refuse to answer it."

To which Sir Thomas replied,

"Sir, my silence is no sign of any malice in my heart, which the King himself must own by my conduct upon divers occasions."—"And as to what you say, that no good subject will refuse to give a direct answer;—I do really think it to be the duty of every good subject, except he be such a subject as will be a bad christian, rather to obey God than man; to be more cautious to offend his conscience than of anything else in the whole world; especially if his conscience be not the occasion of some sedition and great injury to his prince and country; for I do here sincerely protest that I never revealed it to any man alive."<sup>438</sup>

As to the *third* article, alleging practices against the statute in writing letters to Bishop Fisher exhorting him to violate the same law and encouraging him in the like obstinacy,

"One of them was in answer to his, wherein he desired me to let him know what answers I made upon my examinations concerning the oath of supremacy; and what I wrote him upon it was this, that I had already settled my conscience and let him satisfy his according to his own mind. God is my witness, and as I hope he will save my soul, I gave him no other answer; and this I presume is no breach of the laws."

More then noticed the allegation that upon his examination in the Tower he said 'this law was like a two-edged sword; for in consenting to it I should endanger my soul, and in rejecting it should lose my life.' After which there was an examination of "Richard Rich, newly made solicitor-general, and afterwards Lord Rich," who "with

<sup>438</sup> *Id.*, p. 389.

Sir Richard Southwell and Mr. Palmer, Secretary Cromwell's man," had been "sent by the King to take away" More's "books."

"More, having recited in the face of the court all the discourse they had together in the Tower, as it truly and sincerely was, he added: "In good faith, Mr. Rich, I am more concerned for your perjury than my own danger."—"You know that I have been acquainted with your manner of life and conversation a long time, even from your youth to the present juncture, for we lived in the same parish; and you very well know,—I am sorry I am forced to speak it,—you always lay under the odium of a very lying tongue, of a great gamester, and of no good name and character, either there or in the Temple where you was educated. Can it therefore seem likely to your lordships that I should in so weighty an affair as this, act so unadvisedly as to trust Mr. Rich, a man I had always so mean an opinion of in reference to his truth and honesty"—"that I should only impart to Mr. Rich the secrets of my conscience in respect to the King's supremacy, the particular subject and only point about which I have been so long pressed to explain myself? which I never did, nor never would, reveal, when the act was once made, either to the King himself or any of his privy councillors, as is well known to your honours, who have been sent upon no other account at several times by his majesty to me in the Tower."—"But supposing what Mr. Rich has sworn should be true, seeing the words were spoke in familiar and private conversation and that there was nothing at all asserted but only cases put without any offensive circumstances,—it cannot in justice be said that they were spoke maliciously; and where there is no malice there is no offence."<sup>439</sup>

It was attempted to support Mr. Rich by offering as witnesses the two men who were in the same room with Sir Thomas and Mr. Rich when they conferred together. Whereupon it was deposed by Mr. Palmer, 'That he was so busy in thrusting Sir Thomas's books in a sack that he took no notice of their talk'; and by Sir R. Southwell, 'That because his business was only to take care of conveying his books away, he gave no ear to their discourse.' Nevertheless the jury found a verdict of 'guilty'; upon which the Lord Chancellor began to proceed to judgment. An observation of Sir Thomas<sup>440</sup> had the effect of delaying for a little while—but did not prevent—the horrible sentence. It was changed, however, to beheading; on the

<sup>439</sup> *Id.*, pp. 390, 391.

<sup>440</sup> My Lord, when I was concerned in the law, the practice in such cases was to ask the prisoner before sentence whe-

ther he had anything to offer why judgment should not be pronounced against him.' 1 State Tr., 392.

6th of July, in front of the Tower, the head was taken off at one blow.<sup>441</sup>

In connection with "the murder of Sir Thomas More,"<sup>442</sup> Mr. Green was writing of Thomas Cromwell (mentioned in § 12, p. 986) when he observed that "no personal vindictiveness mingled with his crime," and also said:

"No touch either of love or hate swayed him from his course. The student of Machiavelli had not studied the 'Prince' in vain. He had reduced bloodshed to a system. Fragments of his papers still shew us with what a business-like brevity he tickled off human lives among the casual 'remembrances' of the day. 'Item, the Abbot of to be sent down to be tried and executed at Reading.' 'Item, to know the King's pleasure touching Master More.' 'Item, when Master Fisher shall go to his execution and the other.'"<sup>444</sup>

More "followed his principles and sense of duty"; and "his constancy and integrity" are proper "objects of our admiration."<sup>445</sup>

"Something of his calmness may have been due to his natural temperament, something to an unaffected weariness of a world which, in his eyes, was plunging into the ruin of the latter days. But those fair hues of sunny cheerfulness caught their colour from the simplicity of his faith; and never was there a Christian's victory over death more grandly evidenced than in that last scene lighted with its lambent humour."<sup>446</sup>

"That innocent mirth which had been so conspicuous in his life, did not forsake him to the last. He maintained the same cheerfulness of heart upon the scaffold which he used to shew at his table; and, upon laying his head on the block, gave instances of that good humour with which he had always entertained his friends on the most ordinary occasions. His death was of a piece with his life. There was nothing in it new, forced or affected. He did not look upon the severing of his head from his body as a circumstance that ought to

<sup>441</sup> *Id.*, p. 392 to 396. Stapleton says:

"When the news of More's death was brought to the King he was playing at tables; Anne Boleyn was looking on. The King cast his eyes upon her and said, 'Thou art the cause of this man's death,' and presently leaving his play he retired to his chamber, and fell into a deep melancholy." 3 Seward's Anecdotes, *edi.* 1796, p. 99; 1 State Tr. p. 396.

<sup>442</sup> To whom Cromwell seems to have acted in some respects a friendly part. Sir Wm. Fitzwilliam's letter, in Sir H.

Ellis's 3d series of Orig. Let., vol. 2, pp. 276, 277; Singer's Roper, 114-158; cited in Foss's Biogr. Jurid.

<sup>443</sup> Niccolo Macchiavelli, the famous Florentine Secretary, dedicated to Lorenzo de Medici, his treatise called *Il Principe* (the Prince); and died in 1527.

<sup>444</sup> Green's Short Hist., ch. 6, p. 350; Hist. of Engl. Peop., book 5, ch. 4, vol. 2, *edi.* 1879, p. 166.

<sup>445</sup> 3 Hume's Engl., ch. 30, p. 212.

<sup>446</sup> 2 Froude's Engl., ch. 9, p. 376.

produce any change in the disposition of his mind; and as he died under a fixed and settled hope of immortality, he thought any unusual degree of sorrow and concern improper on such an occasion, as had nothing in it which could deject or terrify him.”<sup>447</sup>

Sir *James Mackintosh* observes:

“The just fame of the sufferer, the eloquent pen of his friend Erasmus, the excusable pride of the Roman church in so glorious a martyr, and the atrocious effrontery of the means used to compass his destruction, contributed to spread indignation and abhorrence.”<sup>448</sup>

Erasmus said:

“Many persons favour only their own countrymen; Frenchmen favour a Frenchman; Scotchmen favour a Scotchman; but More’s general benevolence hath imprinted his memory so deep in all men’s hearts that they bewail his death as that of their own father or brother. I myself have seen many persons weep for More’s death who had never seen him nor yet received any kindness from him. Nay, as I write, tears flow from my eyes, whether I will or not. How many persons has that axe wounded, which severed More’s head from his body!”<sup>449</sup>

Lord *Campbell* says of More:

“After the lapse of three centuries, during which statesmen, prelates and kings have been unjustly brought to trial under the same roof,—considering the splendour of his talents, the greatness of his acquirements and the innocence of his life,—we must still regard his murder as the blackest crime that has ever been perpetrated in England under the forms of law.”<sup>450</sup>

As to More’s remains, and as to his widow and his daughter Margaret, the following is extracted from what has been written by three others:

*By Thomas Dugdale.* “Sir Thomas More built the south chancel

<sup>447</sup> *Spectator* of April 10, 1712 (No. 349). Mr. Addison adds, “that what was philosophy in this extraordinary man would be phrenzy in one who does not resemble him as well in the cheerfulness of his temper as in the sanctity of his life and manners.” *Ibid.*

<sup>448</sup> 2 Mackintosh’s *Engl.*, Phila. edi. 1831, p. 157.

<sup>449</sup> 3 Seward’s *Anecdotes*, p. 97. More

was not survived long by his friend Erasmus. He died at Basle on July 12, 1536, and was buried in its cathedral; of him a statue in bronze is in a public place in his native town of Rotterdam. Watkins’s *Biogr. Dict.*, edi. 1822; Penny Magazine, vol. 1 (1832 Octo.), p. 297.

<sup>450</sup> *Lives of Chancellors*, ch. 33, p. 578 of vol. 1, 2d edi. (1846), pp. 65, 66 of vol. 2, Boston edi. (1874.)

of the church of Chelsea; and he was interred in the rector's chancel, on the south side near the communion table."<sup>451</sup>

And on another page, "Chelsea church, near the margin of the river, is chiefly composed of brick. It was raised at various periods. The oldest part is a chapel of the *Lawrence* family, at the eastern end of the north aisle. At the east end of the south aisle, is a chapel constructed by Sir Thomas More, about the year 1522."<sup>452</sup>

*By John Aubrey.* "After he was beheaded, his trunk was interred in Chelsey church, near the middle of the south wall, where was some slight monument erected, which, being worn by time, about 1644, Sir<sup>453</sup> *Laurence*, of Chelsey (no kin to him), at his own proper costs and charges, erected to his memory a handsome inscription of marble. His head was upon London bridge: there goes this story in the family, viz., that one day as one of his daughters was passing under the bridge, looking on her father's head, said she, 'That head has laid many a time in my lap, would to God it would fall into my lap as I pass under'; she had her wish, and it did fall into her lap, and is now preserved in a vault in the cathedral church of Canterbury."<sup>453</sup>

*By Edward Foss.* "His body was buried in St. Peter's, within the Tower, but was at last removed by his daughter Margaret to the tomb in Chelsea church, which he had prepared during his life. His head after remaining for some time exposed on London bridge, came also into the possession of his affectionate child, on whose death it was buried in her arms."—Two years after his execution, an annuity of £20 was granted to his widow, Lady Alice More, and subsequently a lease of one of his houses at Chelsea."<sup>454</sup>

16. *Of Katharine of Arragon; her letter to the King on her death-bed; her death in Jan. 1535-6; place of her interment.*

To the king was written from the dictation of Katharine of Arragon on her death-bed (by one of her maids) the following letter:

'My most dear lord, king and husband! The hour of my death now approaching, I cannot choose but out of the love I bear you, to advise you of your soul's health, which you ought to prefer before all considerations of the world or flesh whatsoever; for which yet you have cast me into many calamities, and yourself into many troubles. But I forgive you all; and pray God to do so likewise. For the rest I commend unto you Mary, our daughter, beseeching you to be a

<sup>451</sup> 2 Dugdale's Engl. and Wales, tit. *Chelsea*, p. 420.

<sup>452</sup> *Id.*, p. 422.

<sup>453</sup> 2 Aubrey's Letters, edi. 1813, pp. 463, 464. The blank in the text is according to Aubrey. He says, 'Sr. Laurence.'

<sup>454</sup> Biogr. Jurid.; 1 Siate Tr., p. 386 to

395; 1 Lodge's Portr., No. 7. Mr. Lodge says of More's head, "It was privately obtained by his affectionate daughter, Roper, and by her placed in the vault of her husband's family, under a chapel adjoining to St. Dunstan's church in Canterbury." *Id.*

good father to her, as I have heretofore desired. I must entreat you also to respect my maids, and give them in marriage, which is not much, they being but three; and to all my other servants a year's pay, beside, their due, lest otherwise they should be unprovided for. Lastly, I make this vow that mine eyes desire you above all things." Farewell."<sup>455</sup>

Katharine was but little more than fifty years of age when in 1535-6 in January, on the 7th (or 8th), she died in Huntingdonshire at Kimbolton.<sup>456</sup>

"With all the placid virtues in which she had lived; mild, forgiving, devout and resigned; kind to her attendants, affectionate to her separate husband, and with maternal tenderness to her princely daughter."<sup>457</sup>

In a letter of the 10th from Greenwich, Henry mentions "the right excellent princess, our dearest *sister*, the relict of our "*brother* prince Arthur, and directs conveyance of her corpse from Kimbolton" "to Peterborough." Accordingly, on the 26th, the body was carried to Peterborough and there interred.<sup>458</sup>

17. "*Act concerning uses and wills*"; and other statutes enacted in 27 Hen. VIII (1535-6.)

Statutes made in the session of parliament, holden by prorogation at Westminster on Feb. 4, in 27 Hen. VIII (1535-6), embrace sixty-three chapters,<sup>459</sup> whereof chapters eight and ten are in 1 'Statutes.

<sup>455</sup> 2 Turner's Hen. VIII, edi. 1827,

Johnson, *Id.*, p. 225.

p. 433.

"Remember me

In all humility unto his highness:

Say, his long trouble now is passing

Out of this world: tell him, in death I

bless'd him,

For so I will.—Mine eyes grow dim.—

Farewell."

*King Henry VIII*, act iv, scene ii, p. 204 of vol. 6, edi. 1833.

"The meek sorrows and virtuous distress of Katharine have furnished some scenes, which may be justly numbered among the greatest efforts of tragedy. But the genius of Shakspeare comes in and goes out with Katharine."

Of course these words must be restricted to Shakspeare's play of Hen. VIII.

<sup>456</sup> 1 State Tr., 368; 2 Collyer's Engl., p. 22; 3 Hume's Engl., ch. 30, p. 215; 1 Seward's Anecdotes, pp. 52, 53; 3 *Id.*, pp. 72, 73; 2 Turner's Hen. VIII, edi. 1827, p. 433; 3 Lingard's Engl., ch. 4, p. 234; 2 Froude's Engl., ch. 11, p. 444.

<sup>457</sup> 2 Turner's Hen. VIII, edi. 1827, p. 433.

<sup>458</sup> Miss Strickland's *Queens of Engl.*, vol. 4, p. 119 to 121.

<sup>459</sup> 3 Stat. of the Realm, p. 531 to 560.

Revised.'<sup>460</sup> In the latter (ch. 10), "an act concerning uses and wills,"<sup>461</sup> are the following provisions:

§ 1. "That where any person or persons stand or be seized, or at any time hereafter shall happen to be seized of and in any honours, castles, manors, lands, tenements, rents, services, reversions, remainders or other hereditaments, to the use, confidence or trust of any other person or persons or of anybody politic, by reason of any bargain, sale, feoffment, fine, recovery, covenant, contract, agreement, will or otherwise, by any manner means whatsoever it be, that in every such case, all and every such person and persons and bodies politic that have or hereafter shall have any such use, confidence or trust, in fee simple, fee tail, for term of life or for years or otherwise, or any use, confidence or trust in remainder or reverter shall from henceforth stand and be seized, deemed and adjudged in lawful seisin, estate and possession of and in the same honours, castles, manors, lands, tenements, rents, services, reversions, remainders and hereditaments with their appurtenances to all intents, constructions and purposes in the law of and in such like estates as they had or shall have in use, trust or confidence of or in the same; and that the estate, right, title and possession that was in such person or persons that were or shall be hereafter seized of any lands, tenements or hereditaments, to the use, confidence or trust of any such person or persons, or of any body politic, be, from henceforth, clearly deemed and adjudged to be in him or them that hereafter shall have such use, confidence or trust, after such quality, manner, form and condition as they had before in or to the use, confidence or trust that was in them."

§ 2. "That where divers and many persons be or hereafter shall happen to be jointly seized, of and in any lands, tenements, rents, reversions, remainders or other hereditaments, to the use, confidence or trust of any of them that be so jointly seized, that in every such case that or those person or persons which have or hereafter shall have any such use, confidence or trust, in any such lands, tenements, rents, reversions, remainders or hereditaments, shall, from henceforth, have and be deemed and adjudged to have, only to him or them that have or hereafter shall have any such use, confidence or trust, such estate, possession and seisin of and in the same lands, tenements, reversions, remainders or other hereditaments in like nature, manner and form, condition and course as he or they had before in the use, confidence or trust of the same lands, tenements or hereditaments;" saving and reserving, as below.<sup>462</sup>

<sup>460</sup> Edi. 1870, p. 450 to 456.

<sup>461</sup> Remarked on in Reeves's Hist. of Engl. Law, ch. 30, vol. 3, edi. 1869, p. 383, *et seq.*; 3 Froude's Engl., ch. 12, edi. 1872, pp. 91, 92.

<sup>462</sup> "Saving and reserving to all and singular persons and bodies politic, their heirs and successors, other than those

person or persons which be seized or hereafter shall be seized of any lands, tenements or hereditaments to any use, confidence or trust all such right, title, entry, interest, possession, rents and action as they or any of them had or might have had before the making of this act. And also saving to all and



§ 3. "Where also divers persons stand and be seized of and in any lands, tenements or hereditaments, in fee simple or otherwise to the use or intent that some other person or persons shall have and perceive yearly to them and to his or their heirs one annual rent of £10 or more or less out of the same lands and tenements, and some other person one annual rent to him and his assigns for term of life or years or for some other special time, according to such intent and use as hath been heretofore declared, limited and made thereof"; It is enacted, "that in every such case, the same persons, their heirs and assigns, that have such use and interest to have and perceive any such annual rent out of any lands, tenements or hereditaments, that they and every of them, their heirs and assigns be adjudged and deemed to be in possession and seisin of the same rent, of and in such like estate as they had in the title, interest or use of the said rent or profit, and as if a sufficient grant or other lawful conveyance had been made and executed to them by such as were or shall be seized to the use or intent of any such rent to be had, made or paid according to the very trust and intent thereof; and that all and every such person or persons as have or hereafter shall have any title, use and interest in or to any such rent or profit, shall lawfully distrain for non-payment of the said rent and in their own names make avowries or by their bailiffs or servants make conisances and justifications and have all other suits, entries and remedies for such rents as if the same rents had been actually and really granted to them with sufficient clauses of distress, re-entry or otherwise, according to such conditions, pains or other things limited and appointed upon the trust and intent for payment or surety of such rent"<sup>468</sup>

§ 4. "That whereas divers persons have purchased or have estate made and conveyed of and in divers lands, tenements and hereditaments unto them and to their wives and to the heirs of the husband, or to the husband and to the wife and to the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband and to the wife for term of their lives or for term of life of the said wife; or where any such estate or purchase of any lands, tenements or hereditaments hath been or hereafter shall be made to any husband and to his wife in manner and form expressed, or to any other person or persons, and to their heirs and assigns to the use and behoof of the said husband and wife, or to the use of the wife

singular those persons and to their heirs which be or hereafter shall be seized to any use, all such former, right, title, entry, interest, possession, rents, customs, services and action as they or any of them might have had to his or their own proper use in or to any manors, lands, tenements, rents or hereditaments whereof they be or hereafter shall be seized to any other use, as if this present act had never been had nor made; anything

contained in this act to the contrary notwithstanding." 3 Stat. of the Realm, 540; 1 Sanders on Uses and Trusts, 83, 84; pp. 68, 69 of 3d ed. (1813), pp. 72, 73 of 5th ed. (1844), and 2d Am. ed. (1855.)

<sup>468</sup> 3 Stat. of the Realm, 540; 1 Sanders on Uses and Trusts, 84, 85, 86; pp. 70, 71 of 3d ed. (1813), pp. 74, 75 of 5th ed. (1844), and 2d Am. ed. (1855.)

as is before rehearsed for the jointure of the wife, that then in every such case, every woman married, having such jointure made or thereafter to be made shall not claim nor have title to have any dower of the residue of the lands, tenements or hereditaments that at any time were her said husband's by whom she hath any such jointure, nor shall demand nor claim her dower of and against them that have the lands and inheritances of her said husband; but if she have no such jointure, then she shall be admitted and enabled to pursue, have and demand her dower by writ of dower after the due course and order of the common laws of this realm."<sup>464</sup>

§ 5. "Provided, that if any such woman be lawfully expelled or evicted from her said jointure, or from any part thereof, without any fraud or covin, by lawful entry, action or by discontinuance of her husband, that every such woman shall be endowed of as much of the residue of her husband's tenements or hereditaments, whereof she was before dowable, as the same lands and tenements so evicted and expelled shall amount or extend unto."

§ 6. Provided also "that this act nor anything therein contained or expressed extend or be in any wise hurtful or prejudicial to any woman or women heretofore being married, of, for and concerning such right, title, use, interest or possession as they or any of them have claim or pretend to have for her or their dower or jointure of in or to any manors, lands, tenements or other hereditaments of any of their late husbands, being now dead or deceased."<sup>465</sup>

Subsequent chapters during the same session of 27 Hen. VIII (1535-6) embrace the following:<sup>466</sup>

<sup>464</sup> 2 Stat. of the Realm, 540, 541; 1 Sanders on Uses and Trusts, 86; pp. 71, 72 of 3d ed. (1813), pp. 75, 76 of 5th ed. (1844), and of 2d Am. ed. (1855.)

<sup>465</sup> The two last sections, numbered 5 and 6 in 3 Stat. of the Realm, p. 541, are numbered 7 and 8 in 1 Sanders on Uses and Trusts, pp. 72, 73 of 3d ed. 1813, and pp. 76, 77 of 5th ed. (1844), and of 2d Am. ed. (1855.)

Opposite the remaining sections, in 3 Stat. of the Realm, pp. 541, 542, may be seen in the margin the following words as to their nature:

§ 7. "Jointure made after marriage (except by act of parliament) may be refused by the wife, who shall then have her dower."

§ 8. "This act shall not extinguish

recognizances," &c.

§ 9. "Proviso for wills of persons dying before 1 May, 1536."

§ 10. "No fine, relief or heriot payable to the King on alienations of estates executed under this act before 1 May, 1536."—"Nor to any private persons."

§ 11. "Cestuis que use having estates executed under this act shall have actions for waste, &c."

§ 12. "Actions pending shall not be abated by this act."

§ 13. "Proviso for wardships, &c."

§ 14. "Recognizances to the King's case in certain recoveries declared void."

§ 15. "Proviso for Welshmen having estates executed under this act."

<sup>466</sup> 3 Stat. of the Realm, p. 542 to 578.

Ch. 11. "An act concerning clerks of the Signet and Privy Seal."

Ch. 15. "An act whereby the King's majesty shall have power to nominate thirty-two persons of his clergy and lay fee for making of Ecclesiastical laws."

Ch. 16. "An act concerning enrollments of bargains and contracts of lands and tenements."

Ch. 20. "An act containing an order for tithes through the Realm."

Ch. 24. "An act for recontinuing of certain liberties and franchises heretofore taken from the crown."

Ch. 27. "An act establishing the court of augmentations."

Ch. 28. "An act whereby all religious houses, of 'Monks, Chanons and Nonnes' which may not dispend manors, lands, tenements and hereditaments above the clear yearly value of £200 are given to the King's Highness, his heirs and successors forever."

Chapters eleven, sixteen, twenty, and twenty-four, are in 1 'Statutes Revised.'<sup>467</sup>

18. *Of Henry Fitzroy, the King's natural son by Lady Talbois; and of the influences to get rid of Anne Boleyn and have in her stead Jane Seymour as Queen. Of the course before and after the commission of April 25, 1536, to Chancellor Audley, the Duke of Norfolk and others. Subserviency of the Chancellor to the Royal will. Those who sat as judges were wanting in a proper sense of judicial duty or in moral firmness, and instead of acquitting Queen Anne as facts and law required, disgraced themselves by a judgment which deprived her of life, (May 19. 1536).*

According to Fuller, *Henry Fitzroy*—natural son of Henry the eighth by Lady Talbois—was born at Blackmore manor in Essex county in 1519; was of "the best disposition," with "forwardness in all martial activity," and "knowledge in all arts and sciences; learned Leland dedicating a book to him: he was created earl of Nottingham and duke of Richmond; "married Mary, daughter of Thomas, duke of Norfolk; and dying *anno* 1536 (in the seventeenth year of his age), was buried at Framlingham, in Suffolk, with great lamentation."<sup>468</sup> It may "be fact that the King desired that this son should marry a princess and have a high office:"<sup>469</sup> and a fact that this son's

<sup>467</sup> Edi. 1870, p. 456 to 467.

<sup>468</sup> 1 Fuller's Worthies, edi. 1840, p. 499; Miss Strickland's Queens of Engl., vol. 4, Phila. edi. 1857, p. 87;

6 Lingard's Engl., ch. 3, p. 110.

<sup>469</sup> 2 Turner's Engl., edi. 1827, p. 40, and p. 122.

death was greatly lamented, both by the King and by Thomas, duke of Norfolk. But not in these or any other facts is to be found justification for such proceedings as were resorted to by the King and the Duke of Norfolk <sup>470</sup> to get Queen Anne Boleyn "*out of the way.*"

"*The Duke of Norfolk* at court and Gardiner beyond the sea thought there might easily be found a mean to accommodate the King both with the Emperor and the Pope *if the Queen were once out of the way*; for then he might freely marry any one whom he pleased, and that marriage, with the male issue of it, could not be disputed; whereas as long as the Queen lived, her marriage, as being judged null from the beginning,<sup>471</sup> could never be allowed by the court of Rome or any of that party."<sup>472</sup>

As to combination and proceedings against Queen Anne, such accounts as had before appeared in England and the United States,<sup>473</sup> may be compared with what has lately been published by Mr. Froude.<sup>474</sup> That in 1536 a considerable party was aiming to overthrow her—is gathered by Mr. Froude from the Austrian archives at Vienna; embracing letters to Charles V, from Eustace Chapuys,<sup>475</sup> his ambassador in England, between 1539 and 1545; and letters of Queen Katharine and the Princess Mary. Mr. Froude understands Chapuys as reporting that the Duke of Norfolk had been 'furious' at the Queen's language to him; that the earl of Northumberland had

<sup>470</sup> Who besides being father of the Duchess of Richmond was maternal uncle of Anne Boleyn.

<sup>471</sup> Being (as appears in § 13, p. 989,) not only in the lifetime of Queen Katharine, but also before the King's divorce from her.

<sup>472</sup> 1 State Tr., 411.

<sup>473</sup> 1 State Tr., p. 409 to 434; 7 Coll-  
yer's Engl., 26 to 34; 3 Hume's Engl.,  
ch. 31, p. 223 to 229; 6 Lingard's Engl.,  
ch. 4, p. 236 to 239; Miss Strickland's  
Queens of Engl., vol. 4, p. 186, *et seq.*

<sup>474</sup> In Appendix to 2 Froude's Engl.,  
p. 503 to 546.

<sup>475</sup> Mr. Froude deems it "necessary to  
say that Chapuys was a bitter Catholic.  
His original mission was to protect the  
interests of Queen Katharine and her

daughter. He regarded her divorce, both  
politically and religiously, with most  
profound abhorrence; and he looked on  
the separation of England from Rome,  
the act of appeals and the act of su-  
premacy as so many infernal bonds with  
which the King had sold himself to  
Hell."—2 Froude's Engl., Appendix  
pp. 506, 507. In a subsequent volume is  
this quotation from Paget. "For Cha-  
puys, I never took him for a wise man,  
but for one that used to speak *cum*  
*summa licentia*, whatsoever came *in*  
*bucram* without respect of honesty or  
truth, so it might serve his turn."—"He  
is a great practiser; with which honest  
term we cover tale-telling, lying, dis-  
simulating and flattering." 4 *Id.*, ch. 22,  
p. 409.

spoken of her "arrogance and malice";<sup>476</sup> and the Duke of Suffolk had spoken of her "as bitterly as Norfolk."<sup>477</sup> Viewing Henry's divorce from Katharine as Chapuys did, he is constantly calling Anne the 'concubine.' "The concubine has bribed some one" says Chapuys, "to pretend a revelation from God that she can conceive no children as long as Queen Katharine and the Princess are alive."<sup>478</sup>

"I am told privately" he said "that many times lately the concubine has blamed the King for his remissness, telling him that it was a shame to himself and to the realm (to spare them) and that they ought to be punished as traitresses under the form of the statute. The said concubine," he continued, "is prouder and haughtier than ever. She dares, as I hear, to tell the King that he is as deeply bound to her as man can be bound to woman, for that she has been the cause of saving him from the sin in which he was living."<sup>479</sup>

Mr. Froude says, "Every minister who furthered or tried to farther the Imperial alliance fell under her displeasure, and she was unmeasured in the violence with which she addressed them. Even Cromwell, who had been considered her right hand, did not feel himself secure. He told Chapuys, at the beginning of June, that if she knew the familiarity that existed between Chapuys and himself she would do him an ill turn. She had reproached him for something three days before, he said, and had told him that she would see his head taken off his shoulders; but he had such confidence in the King his master that he did not think she could harm him."<sup>480</sup>

As to Queen Katharine and the Princess Mary, Chapuys wrote in November:

"The concubine who has conspired the death of the said ladies, thinks of nothing but to get them dispatched. *It is she who commands and governs all, and the King will not contradict her.* The case is most dangerous. It is to be feared, as I have already written, that he will *make his Parliament* and the estates of the realm *the partners, and, as it were, the authors of his misdeeds.*"<sup>481</sup>

As to Katharine's end in January (1535-6) Mr. Froude says:

"It was inevitable that her death, occurring at such a time, so opportunely, should be attributed in the excited state of feeling to foul play. Although the most energetic half of the nation had gone along with the King in the revolt from the Papacy, Queen Katharine had always retained their respect and affection."—"Anne Boleyn was supposed to have poisoned Katharine, and to meditate sending her daughter after her on the same road."<sup>482</sup>

<sup>476</sup> *Id.*, p. 508.

<sup>477</sup> *Id.*, p. 509.

<sup>479</sup> *Id.*, p. 515; citing Chapuys à l'Em-

<sup>478</sup> *Id.*, p. 510.

pereur, Mar. 8.

<sup>480</sup> *Id.*, p. 516.

<sup>481</sup> *Id.*, p. 524.

<sup>482</sup> *Id.*, p. 527, and pp. 561, 562.

"In the atmosphere of impassioned animosity," "the ill-feeling towards Anne was not diminished by the unconcealed satisfaction which she displayed when the news of Katharine's death arrived at the court. She gave Lord Montague, who informed her of it, a handsome present. Her father, Lord Wiltshire, her brother Rochford, and all her party, united with her in indecent exultation; her father and brother especially saying, the only misfortune was that the daughter had not borne the mother company."<sup>483</sup>

Such language was at a time when "Anne's charms had ceased to please" the King, "and he had given way to a new sensual partiality."<sup>484</sup>

"He entertained a secret love for Jane Seymour, who" (it has been said) "had all the charms both of beauty<sup>485</sup> and youth in her person; and her humour was tempered between the severe gravity of Queen Katharine and the gay pleasantness of Queen Anne."<sup>486</sup>

January 29, Chapuis wrote to the Emperor that he had heard the King 'conceived that he might take another wife.'<sup>487</sup> This and other statements of Chapuis may be observed in connection with Miss Strickland's chapters upon Anne and Jane;<sup>488</sup> in one of which is the statement

"That the queen surprised Jane, seated on Henry's knee, receiving his caresses with every appearance of complacency," and gave way to a transport of mingled grief and indignation"; that her shock "brought on the pangs of premature travail; and after some hours of protracted agony during which her life was in imminent peril, she brought forth a dead son January 29th"; that afterwards the king instead of expressing sympathy for her sufferings upbraided her 'with the loss of his boy'; that she with more spirit than prudence retorted 'that he had no one to blame but himself for this disappointment, which had been caused by her distress of mind about 'that wench Jane Seymour'; and that he sullenly turned away, muttering, as he quitted her apartment, that 'she should have no more boys by him.'<sup>489</sup>

Chapuis wrote to the Emperor, Feb. 10, that the Queen "feared the King might treat her as the late Queen had been treated—report

<sup>483</sup> *Id.*, pp. 528, 529.

<sup>484</sup> Lodge's *Portr.*, vol. I, No. 16.

<sup>485</sup> An engraving from the original of Holbern, in the Duke of Bedford's collection, is in Lodge's *Portr.*, vol. I, No. 9.

<sup>486</sup> 1 State Tr., p. 412.

<sup>487</sup> 2 Froude's *Engl.*, Appendix, p. 533.

<sup>488</sup> 4 *Queens of Engl.*, pp. 185, 186, and p. 216 to 219.

<sup>489</sup> *Id.*, pp. 185, 186.

whispered that he had lately made large presents to a lady at the court named Jane Seymour";<sup>490</sup> and Feb. 25:

"The King's new love affair with the lady I have already mentioned goes steadily forward, to the concubine's extreme rage. The King introduced the lady's brother into the privy chamber a fortnight ago."<sup>491</sup>

Chapuis called on Cromwell, alluded to 'Queen Anne's threats to take his head off,' and said he (Cromwell) 'deserved a more gracious mistress.' This was mentioned in a letter of April 1 to the Emperor, which Chapuis was closing, when he heard from the Marchioness of Exeter,

"That the King having been lately in London and Mistress Seymour at Greenwich, the King had sent her a purse full of sovereigns, with a letter which she had kissed and had returned uncpened to the bearer. She had thrown herself on her knees and had bidden the messenger entreat the King to remember that she was the child of honest parents with an unstained name, that she valued nothing so much as her honour, and that she would not wound it for any reward that would be offered to her. If he wished to make her a present, she begged him to keep it till God sent him some one to marry."

"The Marchioness tells me" (continued Chapuis) "that the King's inclination for Mistress Seymour was marvellously increased by her answer. He said that she was a virtuous woman—and that she might understand that his intentions were strictly honourable, he would only speak with her in future in the presence of one of her relations. He has removed Cromwell from a room to which he had private access by a gallery, and has placed there the lady's eldest brother with his wife, so that he can see her when he pleases."<sup>492</sup>

It being now believed that the King desired to marry Jane, there were many who would "lend a hand to the affair."

Chapuis wrote to the Emperor, April 1: "I think it will be well if we can bring it to effect, as well for the assurance of the person of the Princess as to apply a remedy to the heresies here, of which the concubine is the cause and the chief nurse and also to extricate the King from his present abominable and worse than incestuous connection."<sup>493</sup>

Afterwards at Mass, whither Chapuis was conducted by Rochford, Anne "made him" (Chapuis) "a deep obeisance, which he returned,

<sup>490</sup> 2 Froude's Engl., Appendix, p. 534.

<sup>491</sup> *Id.*, p. 535.

<sup>492</sup> *Id.*, pp. 539, 540.

<sup>493</sup> *Id.*, p. 541.

and she passed on. When the service was over, the King and a number of the peers retired to dine in Anne's apartments." These and other matters are mentioned in a letter from "*Chapuy's à l'Empereur*, 21 Avril."<sup>494</sup> Mr. Froude says:

"Whatever else might have been intended, there had been evidently *up to this time no thought of charging Anne with personal criminality*. Politics was the foremost object." "The fortunes of the unhappy woman who was about to be the object of so tremendous an accusation were of interest only so far as her overthrow or her retention of her place beside the King would affect the balance of political power. A decent excuse for divorcing her was being eagerly looked for."—"The difficulty was to declare the second marriage null, without acknowledging the validity of the first."<sup>495</sup>—There is no sign of any desire on the part of the king to charge her with misconduct towards himself since her marriage, or of any thought of doing more than divorce her.<sup>496</sup>

But in four days afterwards, to-wit: at Westminster, on April 25th, in 28 Hen. VIII. (1536), a commission is "addressed to the chancellor Audley, the dukes of Norfolk and Suffolk, the earls of Oxford, Westmoreland, Wiltshire and Sussex, and lord Sands; to Cromwell, the king's secretary, and to ten knights, of whom seven were judges"<sup>497</sup>

Now it being understood that the King was really anxious to be rid of Anne, the accumulated malice of months and years, truths, fictions, exaggerations, blended and whirled together, were ready prepared to burst out.—"*Trifles* seen through the medium of ill will might be magnified into damning evidence of guilt."<sup>498</sup>

Anne, though she appears to have been entirely innocent, and even virtuous in her conduct, had a certain gaiety, if not levity of character, which threw her off her guard, and made her less circumspect than her situation required."—"She indulged herself in an easy familiarity with persons who were formerly her equals, and who might then have pretended to her friendship and good graces."—"Ill instruments interposed and put a malignant interpretation on the harmless liberties of the queen: the viscountess of Rocheford, in particular, who was married to the queen's brother, but who lived on bad terms with her sister-in-law, insinuated the most cruel sus-

<sup>494</sup> *Id.*, p. 542.

<sup>495</sup> *Id.*, pp. 542, 543.

<sup>497</sup> 2 Turner's Hen. VIII, ed. 1827,

p. 443 and note.

<sup>496</sup> *Id.*, p. 562.

<sup>498</sup> 2 Froude's Engl., Appendix, p. 544.

and pp. 562, 563.



picious into the king's mind; and as she was a woman of a profligate character, she paid no regard either to truth or humanity in those calumnies which she suggested. She pretended that her own husband was engaged in a *criminal* correspondence with his sister!"; and made misrepresentations as to "Henry Norris, groom of the stole, Weston and Brereton, gentlemen of the king's chamber," and Mark Smeton, groom of the chamber."<sup>499</sup>

As to an occurrence at the Greenwich tournament,<sup>500</sup> Mr. Turner has shewn that legal proceedings against Anne were begun on April 25th, being some days before that tournament;<sup>501</sup> and Sir James Mackintosh observes of that occurrence that it "must be either altogether a pretext, or one of those trifles, 'light as air,' which are proofs only to the jealous."<sup>502</sup>

On May 2—the very day on which Anne was carried from Greenwich to the Tower—Chapuis wrote to the Emperor,

"Your majesty will remember what I wrote to you at the commencement of the past month, touching what had passed between myself and Mr. Cromwell on the divorce of the King from the concubine. I ascertained the pleasure of the Princess on the subject. She desired that I should do my best to further the matter, especially for the honor and discharge of the conscience of the King, her father."—"I have (in consequence) used such means as seemed convenient to set the affair forward, both with Mr. Cromwell and with many other persons."—"It has turned out, in my opinion, far better than any one could have anticipated."—"The concubine has been taken in the open day-light from Greenwich to the tower of London."

"The Emperor wrote immediately to tell Chapuy's to take advantage of the opportunity to press forward the alliance." He said:

"It is probable" "the King will be more inclined to treat with us, and there will be better ground for arranging what concerns our cousin, the Princess. But you must use all your skill to prevent the King from inclining to a marriage with France. He must rather

<sup>499</sup> 3 Hume's Engl., ch. 31, pp. 223, 224 of N. Y. ed. 1851; 7 Collyer's Engl., ed. 1775, pp. 27, 28. Sir James Mackintosh says of the viscountess of Rochford, "This detestable woman (whose name never should be forgotten) was Jane Parker, the daughter of Henry lord Parker and Mounteagle." 2 Mack-

intosh's Engl., Phila. ed. 1831, p. 167 note; citing Dugdale ii, 207.

<sup>500</sup> 3 Hume's Engl., ch. 31, p. 225; 7 Collyer's Engl., pp. 28, 29.

<sup>501</sup> 2 Turner's Hen. VIII, ed. 1827, p. 435, note 7.

<sup>502</sup> 2 Mackintosh's Engl., Phila. ed. 1831, p. 163.

choose one of his own subjects—either her, for whom he has already shewn an inclination, or some other.”<sup>503</sup>

Chapuy's writes: “I learn from good authority, that in a *conversation between Jane Seymour and the King, about their approaching marriage before the concubine was arrested*, the lady proposed to him to bring back the Princess to the court. The King told her that she was a fool. She ought rather, he said, to think of the position of the children which they might expect for themselves.—“The concubine's little bastard”<sup>504</sup> will, I believe, be excluded from the succession; *the King meant Parliament to invite him to marry again*. To conceal the affection which he bears to the Lady Seymour, he keeps her seven miles distant, in the house of the Master of the House, and he *says in public, that he does not desire to reënter the married state unless his subjects constrain him*.”<sup>505</sup>

Thomas Cranmer, archbishop of Canterbury, “often wanted the courage to resist crimes,” though he may not have “desired to do evil.”<sup>506</sup> His verbose letter of May 3 to the king, though mentioned by Sir James Mackintosh as ‘skilful and persuasive,’<sup>507</sup> may be thought to shew rather desire to discover, and conform to, the king's pleasure than such courage and determination on the archbishop's part to perform his *duty* as best became him in the grave emergency.<sup>508</sup> He certainly was not such a friend as Anne needed.<sup>509</sup> She may have been helped by *one* in the preparation of the letter of May 6 from the Tower to the king, wherein she said: “Try me, good king, but let me have a *lawful* trial; and let not my sworn *enemies sit as my accusers and judges*.”<sup>510</sup> This reasonable request (it may be inferred) made on those in power no impression in its favour.

“Under Cromwell the coercion of juries and the management of judges rendered the courts mere mouthpieces of the royal will.”<sup>511</sup>

<sup>503</sup> 2 Froude's Engl., Appendix, pp. 546, 547.

<sup>504</sup> The Princess Elizabeth, afterwards Queen of England.

<sup>505</sup> *Id.*, p. 551. As to this see *Id.*, p. 559; and in this volume *post* in sec. 19.

<sup>506</sup> 2 Mackintosh's Engl., Phila. edi. 1831, p. 158.

<sup>507</sup> *Id.*, p. 164.

<sup>508</sup> 2 Turner's Hen. VIII, edi. 1827, p. 436 to 438. The letter is in Scoones's Engl. Letters, N. Y. edi. 1880, p. 13 to 15.

<sup>509</sup> 2 Turner's Hen. VIII, edi. 1827, pp. 438, 439.

<sup>510</sup> 1 Harl. Miscel., p. 201; 3 Seward's Anecdotes, p. 76; 1 State Tr., pp. 426, 427; 2 Turner's Hen. VIII, edi. 1827, p. 439 to 442; 2 Mackintosh's Engl., edi. 1827, p. 164, and Appendix iii, p. 300 to 302; Miss Strickland's Queens of Engl., vol. 4, p. 195, and p. 197; Holcombe's Literature in Letters, N. Y. edi. 1866, p. 299 to 301.

<sup>511</sup> Green's Short Hist., sect. 6, p. 350; Hist. of Engl. Peop., book 5, ch. 4, vol. 2, p. 165.

The Lord Chancellor *Audley* conformed without hesitation to the royal will, and took a leading part in the proceedings against the unfortunate Anne from the first surmise against her at court.—“He formed one of the committee of Council to whom the ‘delicate investigation’ was intrusted, and he joined in the report ‘that sufficient proof had been discovered to convict her.’”<sup>512</sup>

The circumstances relied on, May 10, to authorize the indictment, Mr. Turner says, “do not resemble those of a true case, nor suit the natural conduct of a shameless woman.”<sup>513</sup>

Subsequent proceedings were as rapid as they were terrible.<sup>514</sup> The trial of the Queen of England was not by the *House* of Peers, but under a commission to a person mentioned on p. 1008 as ‘furious’ against her.<sup>515</sup> Thomas, duke of Norfolk, treasurer and Earl Marshal of England, who might now be thought of more as a catholic than an uncle, was commissioned Lord High Steward of England, with power to collect “*such and so many* lords, peers and magnates” by whom the “so-called “truth could be better known.”<sup>516</sup>

Westminster Hall seems to have been thought not the most suitable place” to effect the King’s object. The accusers must have doubted whether their proofs would prove their reproof, when *they durst not bring them to the proof of the light in an open place.*”<sup>517</sup> The trial was in the Tower on a scaffold made for the purpose in the

<sup>512</sup> Campbell’s *Lives of Chancellors*, ch. 34, vol. 1, p. 613 of 2d ed. 1846; vol. 2, p. 98 of Boston ed. 1874.

<sup>513</sup> 2 Turner’s *Hen. VIII.*, ed. 1827, pp. 443, 444; 2 Mackintosh’s *Engl.*, Phila. ed. 1831, pp. 165, 166.

<sup>514</sup> On May 12 “Norris, Weston, Breton and Smeton were tried; but no legal evidence was produced against them. The chief proof of their guilt consisted in a *hearsay* from one Lady Wingfield, who was dead. Smeton was prevailed on, by the vain hopes of life, to confess a criminal correspondence with the Queen; but even her enemies expected little advantage from this confession, for *they never dared to confront him with her*, and he was immediately executed; as were also Breton and

Weston. Norris had been much in the King’s favour, and an offer of life was made if he would accuse the Queen; but he generously rejected the proposal, and said that in his conscience he believed her entirely guiltless; but, for his part, he would accuse her of nothing, and he would rather die a thousand deaths than calumniate an innocent person.” 3 Hume’s *Engl.*, ch. 31, p. 226 of N. Y. ed. 1851; 7 Collyer’s *Engl.*, ed. 1775, pp. 30, 31; 2 Turner’s *Hen. VIII.*, ed. 1827, p. 444; 2 Mackintosh’s *Engl.*, Phila. ed. 1831, p. 165 to 167.

<sup>515</sup> 2 Froude’s *Engl.*, p. 508.

<sup>516</sup> *Id.*, ch. 11, p. 476.

<sup>517</sup> 2 Mackintosh’s *Engl.*, Phila. ed. 1831, p. 168.

King's Hall. The Queen's father should not have been and was *not* one of her judges.<sup>518</sup> First among those collected "by whom the" so-called "truth could be better known," was the Lord Chancellor Audley who already in a report had expressed an opinion against Anne. "Having been active as her prosecutor, Audley sat as her judge,"<sup>519</sup> on the right hand of the Lord High Steward. The arraignment was on May 15.

The chief evidence against Anne and her brother, Lord Rochford, "is said to have consisted in Rochford's having been seen to lean on her bed before some company!"<sup>520</sup> "Sir John Spelman mentions a dying declaration of Lady Wingfield, transmitted to the King by Lady Rochford, the wife of Anne's brother, as having made a strong impression on" the King.<sup>521</sup>

"Anne was without counsel."<sup>522</sup>—"She assumed a cheerful and fearless air, as if still the unquestionable queen. She defended herself by few words; and more by her modest countenance than by her observations. Her mien excused more than what she said; but what she said was much to the purpose and very interesting."<sup>523</sup>

"It was everywhere muttered abroad that the queen in her defence had cleared herself in a most noble speech. All writers who lived

<sup>518</sup> 1 State Tr., pp. 409, 410, and p. 417.

<sup>519</sup> Campbell's *Lives of Chancellors*, ch. 34, vol. 2, p. 99, Boston ed. 1874.

<sup>520</sup> 7 Collyer's *Engl.*, ed. 1775, p. 31; 3 Hume's *Engl.*, ch. 31, N. Y. ed. 1851, p. 226. As to what he was charged with, "He replied to all so well, that many persons present were ready to bet ten to one that he would be acquitted; especially because no witnesses were produced either against him, or against her, as is the custom when the prisoner denies the crime of which he is accused." 2 Froude's *Engl.*, Appendix, pp. 553, 554. Though judgment of death was given against him, yet, at the time of his execution, he declared himself innocent of everything with which he was charged. *Id.*, p. 556.

<sup>521</sup> 2 Mackintosh's *Engl.*, Phila. ed.

1831, p. 162, *note*; 2 Turner's *Hen. VIII.*, ed. 1827, p. 451, *note*. If such a declaration had been offered at the trial, it could not lawfully have been admitted as evidence without an opportunity of cross-examining Lady Rochford; when her falsehood might have become as manifest, as afterwards it did, by the confession which she made when about to die; as to which see the last paragraph of this section.

<sup>522</sup> "Attended only by her ladies." 2 Turner's *Hen. VIII.*, ed. 1827, p. 445. Sir James Mackintosh says: "The ignorant and treacherous women of her household." 2 Mackintosh's *Engl.*, Phila. ed. 1831, p. 167.

<sup>523</sup> 2 Turner's *Hen. VIII.*, ed. 1827, p. 445.

near the time confirm this account of her defence."<sup>524</sup>—"Magistrates of London, and several others who were there, said they saw no evidence against her; only it appeared that they were *resolved to be rid of her*."<sup>525</sup>

Camden mentions that the spectators of the trial deemed her innocent, and merely circumvented."<sup>526</sup> Bishop Godwin says, "Had the peers given their verdict according to the expectation of the assembly, she had been acquitted."<sup>527</sup>

She repelled each charge with so much modesty, temper and natural good sense, that before an impartial tribunal she must have been acquitted; "the evidence to support the main charge consisting of hearsay and forced confessions by accomplices not produced, was such as in our days could not be submitted to a jury. Yet, under the direction of Audley, she was unanimously found guilty."<sup>528</sup>

There is ascribed to Anne at the time of the sentence, an address to the judges which was calm and dignified;<sup>529</sup> and which Mr. Turner mentions as "a combination of feeling, natural eloquence and good sense."

"Gentlemen, I will not say that your sentence is unjust, nor presume that my opinion ought to be preferred to the judgment of you all; for I think you have sufficient reasons, arguments and occasions of suspicion and jealousy on which you have condemned me. But there must be some others than those you have here produced in judgment; for *I am entirely innocent of these accusations, and I shall*

<sup>524</sup> 2 Turner's Hen. VIII, edi. 1827, note on p. 460 to p. 544; 2 Mackintosh's Engl., Phila. edi. 1831, p. 162, *note*, and pp. 167, 168. "The description of this scene by the narrative versifier" (Wyatt) "bears marks of accurate intelligence, and minute observation. 'The queen,' says he, defended her honor calmly against the imputation of unutterable turpitudes. She proved that she was conscious of a righteous cause, more by a serene countenance than by the power of language. She spoke little; but no man who looked on her could see any symptoms of criminality." *Id.*, p. 168.

<sup>525</sup> 1 State Tr., 424. "The Lord Mayor afterwards remarked to some of her friends that he could not observe

anything in the proceedings against her, but that they were resolved to seek occasion to get rid of her. 2 Turner's Hen. VIII, edi. 1827, p. 446.

<sup>526</sup> *Id.*, p. 447, note 2; citing Annal. Introd. Collyer and Hume concur that "the spectators could not forbear pronouncing her entirely innocent." 7 Coll. Engl., p. 32; 3 Hume's Engl., ch. 31, p. 227.

<sup>527</sup> Adopted in Miss Strickland's Queens of Engl., vol. 4, p. 197; 1 State Tr., 410.

<sup>528</sup> Campbell's Lives of Chancellors, ch. 34, pp. 613, 614 of vol. 1, edi. 2 (1846), p. 99 of vol. 2, Boston edi. 1874; 2 Froude's Engl., Appendix, p. 563.

<sup>529</sup> 1 State Tr., p. 424.

*not ask pardon of heaven for them, as I have always been a faithful and loyal wife to the king my lord.* But perhaps I have not always shewn to him such a perfect humility and reverence as his graciousness and courtesy deserved, and which his good temper, and the honor which he has done me, required. I confess that I have often had suspicious fancies against him, in which I freely own I have been deficient in strength and wisdom; but heaven is witness that I have not otherwise trespassed against him, and at the moment of death shall confess nothing else. Think not that I say this to prolong my life."—"I mean these last words to serve no other purpose than to defend my honor."<sup>530</sup>

This "unfortunate and beautiful Queen, to whose innocence" (Mr. Lodge thinks) "posterity has implicitly subscribed," was sentenced to death;<sup>531</sup> although against her there was produced no evidence "that would bear a dispassionate legal examination";<sup>532</sup> and although against the King there are damnatory facts. Among the things told of what was passing between the King and Mrs. Jane Seymour, Chappuis says:

"The day before" Anne "was condemned" the King "sent Sir Nicholas Carew and some other gentlemen to fetch Mistress Seymour. They brought her within a mile of the palace, where she is splendidly served by the officers of the royal kitchen, and is magnificently dressed. A lady, a relation of hers, who dined with her on the day of the sentence, told me that a message came from the King to her in the morning that by three o'clock he would send her word that the concubine was condemned. This he did by Master Bryan, whom he dispatched with all speed."<sup>533</sup>

Granger states Anne's case briefly thus:

"This beauteous queen fell a sacrifice to the violent passions of Henry the Eighth; to his anger for bringing him a dead son; to his jealousy for the innocent but indiscreet familiarities of her behaviour;

<sup>530</sup> 2 Turner's Hen. VIII, edi. 1827, p. 446, note. Mr. Turner observes that her address rests "upon the authority of the Lord of Miheive, and as we have only Meteren's prose version of his verse, there may be somewhat of a poet's usual heightening, or, at least, inevitable amplification." *Ibid.*

<sup>531</sup> Lodge's Portr., vol. 1, No. 8.

<sup>532</sup> Miss Strickland's Queens of Engl., vol. 4. After the publication of her first

edition of this volume there was (in some periodicals and papers) allusion to what was supposed to be in documents mentioned in Report of the Record commission as to 'Baga de Secretis.' Such allusion led Miss Strickland to make as to this bag observations which are in a subsequent edition of vol. 4, p. 215.

<sup>533</sup> 2 Froude's Engl., Appendix, p. 557.

and above all to his passion for Jane Seymour, whom he married the next day after she was beheaded."<sup>584</sup>

The following words may be considered a strong but true sentence against King Henry :

"Within one and the same month" was queen Anne flourishing, accused, condemned, executed; and another assumed into her place, both of bed and honour: The first of May it seemeth, she was informed against, the second imprisoned, the fifteenth condemned, the seventeenth deprived of her brother and friends who suffered in her cause, and the nineteenth executed; on the twentieth the King married Jane Seymour who, on the 29th, was publicly shewed Queen."<sup>585</sup>

To this sentence may be added some of Mr. Froude's observations:

"The accusations against Anne were of themselves of a monstrous kind. No trace can be found of any previous suspicion of her conduct. She was charged suddenly with the broadest and grossest profligacy. She was hurried out of the world with the most violent precipitancy; and within a few days of her death Jane Seymour was in the place which she had left vacant. The obvious inference is, that she was falsely accused, that the King was tired of her and wished her out of the way, that he might take his pleasure with his new favorite."<sup>586</sup>

Henry's subservient judges pronounced such a sentence as enabled the despotic king to increase or lessen at his pleasure the suffering of the helpless woman in the hour of death. The sentence was, that she "*as the king shall command* be brought to the queen within the said Tower, and there *burned* or beheaded *as shall please the King*."<sup>587</sup> If the King desired her to act in a certain way before the archbishop, or at the hour of her death, those who so empowered him to *burn* her or not as should please him, gave him

<sup>584</sup> 1 Granger's Biogr. Hist., edi. 3 (1779), p. 78.

<sup>585</sup> 1 State Tr., 411; Miss Strickland's Queens of Engl., vol. 4, pp. 219, 220. The reader may compare what in 1533 was done by Archbishop Cranmer as to Katharine of Arragon, notwithstanding the Pope's dispensation (§ 13, p. 990,) with what was done in 1536 on May 19.

This besides being the day of the execution of Queen Anne, is the date of the dispensation by Cranmer of kindred and all other impediments in the marriage of the King and Jane Seymour." *Id.*, p. 221.

<sup>586</sup> 2 Froude's Engl., Appendix, p. 503.

<sup>587</sup> 2 Froude's Engl., ch. 11, p. 478.

the means of influencing her action. 1 State Tr., 419. The King aimed to get her to make some admission of matters before his marriage with her; and the Archbishop Cranmer who, in 1533, judicially confirmed that marriage, was on the 17th of May, 1536, so compliant as to pronounce that that marriage "was and *always had been null and void*"<sup>538</sup> Perhaps it did not occur to the Archbishop that if Henry Percy had been "so contracted to Anne as to avoid a subsequent marriage, his own children would have been illegitimate."<sup>539</sup> The inconsistency between the sentence of the judges proceeding on the ground that the marriage of Henry VIII with Anne was valid, and she his lawful wife and Queen, and the sentence of the Archbishop that *that* marriage "was and *always had been null and void*" has been well remarked upon.<sup>540</sup>

Disgust at the then abject and debasing subserviency is forcibly expressed by Lord Campbell, when he says: "It is well that Henry did not direct that Audley should officiate as executioner, with Cranmer as his assistant; for they probably would have obeyed sooner than have given up the seals or the primacy."<sup>541</sup>

Very early on the morning of May 19 (1536), Sir William Kingston wrote to Secretary Cromwell:

"If we have not an hour certain, as it may be known in London, I think here will be but few, and I think a reasonable number were best; for I suppose she will declare herself to be a good woman for all men but for the King at the hour of her death; for this morning she sent for me and protested her innocency; and now again; and

<sup>538</sup> In the letter dated at Newington Green, May 14, in 28 Hen. VIII, Henry Percy (then Earl of Northumberland) *denies* that "ever there were any contract or promise of marriage between" Anne and him. 1 State Tr., 426. On another page it is said there "might be some promise he made to marry *per verba de futuro*, which, though it was no precontract in itself, yet it seems the poor Queen was either so ignorant or so ill advised as to be persuaded afterwards it was one; though it is certain that nothing but a contract *per verba de*

*præsenti* could be of any force to annul the subsequent marriage." *Id.*, p. 418.

<sup>539</sup> 3 Mackintosh's Engl., Phila. edi. 1833, p. 45, note.

<sup>540</sup> 1 State Tr., 419; 3 Hume's Engl., ch. 31, p. 227; 6 Lingard's Engl., ch. 4, p. 244 to 247; 2 Mackintosh's Engl., Phila. edi. 1831, pp. 169, 170; Miss Strickland's Queens of Engl., vol. 4, pp. 202, 203; Froude's Engl., Appendix, p. 566.

<sup>541</sup> Lives of the Chancellors, ch. 34, p. 614 of vol. 1, 2d edi. (1846), p. 100 of vol. 2, Boston edi. 1874.



said to me, 'Mr. Kingston, I heard say I shall not die aforenoon; and I am sorry therefore, for I thought to be dead by that time and past my pain.' I told her it should be no pain, it was so *sotell*."—"I have seen many men and women executed, and they have been in great sorrow; and, to my knowledge, this lady hath much joy and pleasure in death."<sup>542</sup>

It is said that just before Anne went to execution, she sent by a messenger this to the King:

"Commend me to his majesty and tell him he hath ever been constant in his career of advancing me; from a private gentlewoman, he made me a marchioness; from a marchioness a queen; and now he hath no higher degree of honour, *he gives my innocency* the crown of martyrdom."<sup>543</sup>

During the whole period of Anne's imprisonment, her protestation of innocence was constant.<sup>544</sup> And the language ascribed to her when on the scaffold, is not at all inconsistent with her innocence. The words are such as is reasonable to suppose were suggested by a person of influence with her; who desired to act himself and get her to act in a way agreeable to the king;<sup>545</sup> "that particular form" may have been "enjoined by authority, that she might not seem to impeach 'the king's justice.'" It is so considered by Dr. Lingard in the very passage wherein he says of Anne Boleyn, "she fell a victim to the jealousy or resentment of a despotic husband."<sup>546</sup>

<sup>542</sup> Lodge's Portr., vol. I, No. 8.

<sup>543</sup> 1 State Tr., pp. 432, 433. Miss Strickland observes that "Lord Bacon is the only person who places it in its apparently true chronology, the day of her death, when hope was gone, and the overcharged heart of the victim dared to give vent to its last bitterness in these memorable words." *Queens of Engl.*, vol. 4, p. 203.

<sup>544</sup> 1 State Tr., pp. 419, 420, and p. 429; 3 Seward's Anecdotes, pp. 74, 75; 2 Froude's Engl., Appendix, p. 557, Lodge's Portr., vol. I, No. 8.

<sup>545</sup> The speech begins thus: "Good Christian People, I am come hither to die. For according to the law, and by

the law, I am judged to die, and therefore I will speak nothing against it. I am come hither to accuse no man, nor to speak anything of that whereof I am accused and condemned to die."

3 Seward's Anecdotes, pp. 75, 76; 1 State Tr., 410, 421; 6 Lingard's Engl., ch. 4, pp. 248, 249; 2 Turner's Hen. VIII., edi. 1827, pp. 454, 455; 2 Mackintosh's Engl., Phila. edi. 1831, pp. 170, 171; Chambers's Engl. Let., vol. I, p. 68; Miss Strickland's Queens of Engl., vol. 4, pp. 209, 210; 2 Froude's Engl., ch. 11, p. 487.

<sup>546</sup> 6 Lingard's Engl., ch. 4, p. 317, *note*.

In after years there is mention of confessions, on the approach of death: by Lady Rochford of her false accusation of Queen Anne;<sup>547</sup> and by the dying monarch of his remorse of conscience for her murder.<sup>548</sup>

19. *Mention of Hen. VIII as carrying judicial murder in his bed. In 1536, in April, writs were tested for a Parliament. In June, grants by the King to Queen Jane Seymour and her kin; speech by Lord Chancellor Audley when Parliament met; its statutes. Marriages of James V, of Scotland, 1 to Magdalene; 2 to Mary ..... of Guise.*

April 25 in 28 Hen. VIII (1536) is the date of the commission mentioned in the preceding section (p. 1012), as "addressed to the Chancellor Audley, the dukes of Norfolk and Suffolk" and others; which seems to be the beginning, on the part of Henry VIII, of those proceedings which have caused it to be said:

"He is the only prince of modern times who carried judicial murder into his bed, and imbrued his hands in the blood of those whom he had caressed."<sup>549</sup>

To get Queen Anne Boleyn "out of the way," and Jane Seymour in her place, was alike the King's desire at the date of that commission and two days afterwards, to-wit: on the 27th of April, when writs were tested for a parliament in June.<sup>550</sup>

In that year (1536), in June, the King made one grant on the first and another on the third, "unto his most dear and entirely beloved

<sup>547</sup> In 1542, on Feb. 13, when Lady Rochford suffered death on the scaffold, her last words were: "That she supposed God had permitted her to suffer this shameful doom as a punishment for having contributed to her husband's death by her false accusation of Queen Anne Boleyn; but she was guilty of no other crime." Miss Strickland's *Queens of Engl.*, vol. 4, p. 326.

<sup>548</sup> State Tr., 426; Miss Strickland's *Queens of Engl.*, vol. 5, p. 61. Thevet's *Cosmographie Universelle*, l. 16, c. 5, p. 657, is cited in 2 Turner's *Hen. VIII*,

edi. 1827, p. 459, note 70.

<sup>549</sup> 2 Mackintosh's *Engl.*, Phila. edi. 1831, ch. 7, pp. 159, 160.

<sup>550</sup> 1 State Tr., 423. Although Mr. Hume may not have become aware of the writs being tested on the 27th of April, when he wrote that "the trial and conviction of Queen Anne, and the subsequent events, made it necessary for the King to summon a new parliament" (3 Hume's *Engl.*, ch. 31, N. Y. edi. 1851, p. 229,) yet it may be that as early as April 27 the King was resolved on some of those subsequent events.

wife, Queen Jane," eldest daughter of Sir John Seymour, of Wolfe Hall in Wiltshire, by Margaret, daughter of Sir Thomas Wentworth, of Nettlestead in Suffolk; on the fifth raised her brother Edward (being the eldest of Sir John's sons) to the dignity of Viscount Beauchamp; and on the seventh made to him grants of property.<sup>551</sup>

The session of parliament, under the writs before mentioned, began at Westminster on the eighth of June.<sup>552</sup> In the speech ascribed to Lord Chancellor Audley on this occasion, he is represented to have spoken of the "great anxieties and perturbation of mind" which the King suffered on account of his *first* marriage, and of his 'great perils and danger' when he contracted his *second* marriage; then this tool of the King is reported to have said:

"What man of middle condition would not this deter from marrying a third time?"—"Yet this, our most excellent Prince, *on the humble petition of the nobility, and not of any carnal lust or affection*, again condescends to contract matrimony, and hath at this time taken unto himself another wife, whose age and fine form denotes her most fit and likely to bring forth children."—"Let us humbly pray to God that he would bless this our most excellent Prince with some offspring."<sup>553</sup>

With such prayers the King is supposed to have co-operated.

Statutes made in the session of parliament at Westminster in 28 Hen. VIII, embrace fifty-two chapters;<sup>554</sup> whereof chapters five, eleven and fifteen are in 1 'Statutes Revised.'<sup>555</sup> In the margin of sections of chapter seven—"an act for the establishment of the succession of the Imperial crown of this realm"—are the following words:

§ 1. "Recital of Statute 25 Hen. VIII, c. 22, § 1, for limiting the succession of the crown; on the King's marriage with Anne Boleyn;"—" (§ 9) imposing oath for observance of the said act"— (§ 5) for punishing slanderers of the said marriage as traitors;" St. 26 Hen. VIII, ch. 2, ratifying the form of the oath."—"Such marriage

<sup>551</sup> 3 Stat. of the Realm, pp. 681, 683, 704, 705; Lodge's Portr., vol. 1, Nos. 9 and 20. Sir John died in his 60th year, December 21, 1536. Miss Strickland's Queens of Engl., vol. 4, p. 223.

<sup>552</sup> 3 Stat. of the Realm, p. 651.

<sup>553</sup> Campbell's Lives of the Chancel-

lors, ch. 34, p. 616 of vol. 1, 2d edi. (1846), p. 101 of vol. 2, Boston edi. (1874); Miss Strickland's Queens of Engl., vol. 4, p. 221.

<sup>554</sup> 3 Stat. of the Realm, p. 651 to 716.

<sup>555</sup> Edi. 1870, p. 467 to 474.

since discovered to be invalid;" divorce thereon."—"Right of succession of the King's daughter Elizabeth under the said act."—Treason and attainder of Queen Anne and her accomplices."—"Clauses in recited act become inconsistent."—"The recited acts 25 Hen. VIII, c. 22, 26 Hen. VIII, c. 2, repealed."

§ 2. "Such repeal shall not discharge any one from treason committed against the said recited acts."

§ 3. "Transgressions against the provisions of Stat. 25 Hen. VIII, c. 22, and also against 26 H. VIII, c. 13, by words and actions against Queen Anne and her daughter Elizabeth, whereby subjects may have incurred the peril of treason under the acts."—"All subjects having so spoken or acted, declared to be pardoned, and released from all penalties of treason or misprision."

§ 4. "Attainder and forfeiture of said Queen Anne and her accomplices for treason."

§ 5. "Marriage of the King with Queen Jane"—"For prevention of future doubts, the marriage of the King and Lady Katharine, widow of his brother Prince Arthur, declared to be void, and their separation to be valid; dispensation to the contrary declared to be void; and all issue of the said marriage to be illegitimate."<sup>556</sup>

§ 6. "The marriage of the King and the late Queen Anne declared void, and their divorce to be valid; without appeal or repeal. All issue of the said marriage declared to be illegitimate."<sup>557</sup>

§ 7. "Prohibited degrees of marriage; extended to cases of carnal knowledge. None can dispense with God's law. None shall marry within the said prohibited degrees. Separations of persons so married void. Persons not yet separated shall be separated by the sentence of the ordinary; without any appeal to Rome, &c."

§ 8. "The King's issue by Queen Jane declared to be his lawful children. Limitations of descent of the crown, viz: to the King's sons successively, and the heirs of their bodies; for default of sons then to the King's legitimate daughters successively, and the heirs of their bodies."

§ 9. "In default of the King's issue. Danger of naming a successor to the Crown immediately; advantage of empowering the King to do so. On failure of his issue, the King may limit the descent of the Crown, by letters patent or by his will, to any person in possession or remainder; who shall be obeyed accordingly, whether male or female."

§ 10. "Such person shall succeed to the Crown as heir, and as if specially named herein."

§ 11. "If any of the King's heirs or children usurp against each other, or if they or the persons to whom the crown may be limited, under the powers of this act, disturb the descent or limitation under this act, they shall be deemed guilty of high treason, and shall forfeit their claims."

<sup>556</sup> Issue of this marriage was the Princess Mary; afterwards Queen of England.

<sup>557</sup> Issue of this marriage was the Princess Elizabeth; afterwards Queen of England.

§ 12. "Punishment of such persons as by word, writing or act, shall do anything to the peril of the King, his heirs or successors to the crown; or for the repeal, &c., of this act or of the King's disposition by force thereof; or to the prejudice of his marriage with Queen Jane, &c.; or of the succession of his issue or successors under this act; or of their fame, person or title; or shall judge the King's former marriages to be valid; or shall impugn the divorces pronounced against such marriages; or shall call the children of such marriages legitimate; or under any pretence shall attempt, &c., to deprive the King, or his heirs or successors of title or power; or, on being required shall refuse to answer interrogatories on oath relating to this act. All such persons declared guilty of high treason, and shall suffer death, and forfeit all their lands and goods, &c.; general saving for titles of persons accruing before such treason committed."

§ 13. "Offenders in treason shall not have privilege of sanctuary."

§ 14. "Upon the King's demise, issue male under 18, or female unmarried under 16, shall be under the guardianship of their mother and a council, or of a council only, as the King's will shall direct. Penalty upon all opposers thereof; high treason."

§ 15. "All subjects shall be sworn to the performance of this act. Form of the oath."

§ 16. "All persons suing livery, &c., out of the King's hands, shall take the said oath. Persons refusing to take the said oath, or protesting against declaring their thoughts on interrogatories, declared guilty of high treason."

§ 17. "If the King at any time, by his letters patent or will, shall advance any persons of his blood to any title or dignity and grant them any estates, such patent or will shall be as valid as if specified in this act, and as if granted by authority of parliament. General saving rights."

§ 18. "This act shall be construed most forcibly; without derogation by any other act made or to be made."

In the same session (28 Hen. VIII) were the following chapters:

Ch. 10. "An act extinguishing the authority of the bishop of Rome."<sup>558</sup>

Ch. 11. "An act for restitution of the first fruits in the time of vacation to the next incumbent."<sup>559</sup>

Ch. 15. "An act for punishment of pirates and robbers of the sea."<sup>560</sup>

Ch. 16. "An act for the release of such as have obtained pretended licenses and dispensations from the see of Rome."<sup>561</sup>

<sup>558</sup> 3 Stat. of the Realm, p. 663 to 666.

<sup>559</sup> *Id.*, pp. 666, 667.

<sup>560</sup> *Id.*, p. 671. "The *preamble* of the act, 28 H. VIII, for the trial of felony, where treasons are done upon the sea,"

is cited (in connection with the resolution *against* torture) in 3 State Tr., pp. 371, 372.

<sup>561</sup> 3 Stat. of the Realm, pp. 672, 673.

Ch. 17. "An act giving authority to such as shall succeed to the crown of this realm when they shall come to the age of 24 years to make frustrate such acts as shall be made before in their time."<sup>562</sup>

Ch. 24. "An act concerning the attainder of the Lord Thomas Howard."<sup>563</sup>

Ch. 25. "An act concerning the assurance of certain land unto Sir Edward Seymor, Knt., Vicount Beauchamp."<sup>564</sup>

Ch. 38. "An act concerning the assurance of the manors of Parys-garden, Hyde and others to the Queen's Grace."<sup>565</sup>

Ch. 45. "An act concerning the Queen's jointure."<sup>566</sup>

In Nov., 1536, Henry's nephew, James the Fifth of Scotland, proceeded to the French court; and Francis I gave him his daughter Magdalene in marriage.

"Their marriage was celebrated Jan. 1, 1537"; "and on the 28th of May they landed in Scotland."—"Magdalene did not, however, long survive"; "wasted by a hectic fever, she died" in "July."<sup>567</sup>

Soon ambassadors were sent "to France, to bring over Mary, of the house of Guise, widow of the duke of Longueville."

"Next year (June 12), Mary" "landed at Balcomy, a seat belong-

<sup>562</sup> *Id.*, p. 673.

<sup>563</sup> *Id.*, p. 680. Mr. Hume speaking of its being "made treason to marry without the King's consent, any princess related in the first degree to the crown," says: "This act was occasioned by the discovery of a design formed by Thomas Howard, brother of the Duke of Norfolk, to espouse the Lady Margaret Douglas, niece to the King, by his sister, the Queen of Scots, and the Earl of Angus. Howard, as well as the young lady, was committed to the Tower. She recovered her liberty soon after; but he died in confinement." 3 Hume's Engl., ch. 31, p. 230. His death in 1537 is mentioned in Sir H. Ellis's 3d series of Orig. Let., vol. 3, pp. 135, 136. In *Id.*, p. 136 to 138, is a letter from Lady Margaret Douglas, afterwards mother of Lord Darnley.

<sup>564</sup> Reciting and confirming grants by the King's Letters patent, dated June 7 in 28 Hen. VIII, 3 Stat. of the Realm, p. 681. The next chapter (26) is "An act concerning assurance of a messuage

and certain land in Kew unto Sir Edward Seymour, Knt. Viscount Beauchamp, and to the Lady Anne, his wife." *Id.*, p. 683.

<sup>565</sup> *Id.*, p. 695 to 697.

<sup>566</sup> Reciting the King's grant by patent dated at Westminster the 3d day of June, in 28 Hen. VIII, "unto his most dear and entirely beloved wife, Queen Jane, and in consideration of the pure, sincere and undoubted marriage had and solemnized between his Grace and the said Queen Jane, and for satisfaction of such dower and jointure as she may claim by reason of the same;" and his grant by other letters patent dated June 1, in 28 Hen. VIII, "unto his said most dear and entirely beloved wife, Queen Jane." *Id.*, pp. 704, 705.

<sup>567</sup> Buchanan's Scotland, translated by Aikman, edi. 1824, vol. 2, p. 315; 1 Granger's Biogr. Hist., edi. 3 (1779), p. 83. There are different statements as to the time of the marriage—and the time of the death—of Magdalene. Encyclop. Am., tit. James V.

ing to James Learmont; thence she proceeded by land to St. Andrews, where in presence of a great number of the nobility, she was married to the King."<sup>568</sup>

20. *In Octo. 1537, birth of Prince Edward; and death of his mother, Queen Jane. In 1538, the whole Bible printed in English. The King's address of April 8 (29 Hen. VIII), to 'the Emperor. Christian princes and all true Christian men.' Language thereof contrasted with Henry's course as to transubstantiation, and the ex-chancellor, Thomas A. Becket.*

In 1537, "at my Lord's manor of Hampton court, the xiith day of October," was sent forth a letter announcing the queen's being "delivered and brought in childbed of a Prince."<sup>569</sup> On the ensuing Monday night Prince Edward was baptized; on the twelfth day after his birth his mother died 'in childbed'; she (Queen Jane) being the first spouse whom Hen. VIII owned at her death as his wife. The various devout services which were performed daily for near a month before the day of the funeral, as well as on that day, were after the order of the Romish ritual; the Princess Mary officiated as chief mourner. On Nov. 12 the funeral procession was from Hampton to Windsor; there Queen Jane was interred in St. George's chapel.<sup>570</sup>

<sup>568</sup> Buchanan's *Scotland* (by Aikman), edi. 1824, vol. 2, p. 317. In 1539 "the Queen bore a son at St. Andrews, and the next year another at the same place." *Id.* These two sons died almost at the same moment, the one at St. Andrews, and the other at Sterling. Under what circumstances James received intelligence of their death is stated in *Id.*, p. 321.

<sup>569</sup> Lodge's *Portr.*, vol. 1, No. 9.

<sup>570</sup> *Id.*; 2 Turner's *Hen. VIII.*, edi. 1827, pp. 476, 477; Miss Strickland's *Queens of Engl.*, vol. 4, p. 224 to 230; 3 Froude's *Engl.*, ch. 14, p. 241 to 244. From the city of York, Nov. 12, Cuthbert Tunstal, Bishop of Durham, wrote to the King a letter of consolation; telling him 'when Almighty God hath taken from your Grace to your grete discomfort a most blessed and ver-

tuouse lady, consyder what he hath gyffen your Hyghness again to your comforte and to the rejoyse of all us your subgiettes, our most noble Prince, to whom God hath ordenyd your Majesti not only to be fadyr but also as the tyme now requireth to supply the rowme off a modyr also." Sir H. Ellis's 3d series of *Orig. Let.*, vol. 3, p. 146 to 151. Perhaps Henry tried 'not only to be fadyr', but 'to supply the rowme of a modyr also.' For afterwards Richard Crumwel wrote from Roydon, "His Grace went to the Prince and there hath so laiyd all this day with much myrth and joye daleyng with him in his armes a long space, and so holding hym in a wyndow to the sight and great comfort of all the people." *Id.*, p. 209 to 211.

From the "palace at Westminster, the 8th of April," in 29 Hen. VIII was issued Henry's address to "the Emperor, Christian Princes and all true Christian men"; assigning reasons why in the council at Uincence, he will neither be present nor 'truste any proctour with our cause'; and saying—

"There is almost nothing, that may do more hurt to the christian commonwealth, to the faith, to our religion, than general councils, if they be abused to lucre, to gains, to the establishment of errors. They be called general, and even by their name do admonish us that all christian men which do dissent in any opinion may, in them, openly, frankly and without fear of punishment or displeasure, say their mind. For since such things, as are decreed in general councils, touch equally all men that give assent thereunto, it is meet that every man may boldly say there that he thinketh."—"It ought not to be called a general council, where only those men are heard which are determined forever, in all points to defend the popish part, and to arm themselves to fight in the bishop of Rome's quarrel, though it were against God and his scriptures."<sup>571</sup>

Such language is remarkable. For in England, in 1537, and for some years afterwards, persons who departed (however conscientiously) from the Catholic doctrine of transubstantiation, or were guilty, in some other respect, of what was deemed heresy, were, under Henry's authority, punished with *torture*—made to suffer death by the application of *fire* in an excruciating manner.<sup>572</sup>

"The case of Lambert may be selected as a specimen of the numerous deaths inflicted on those who disbelieved more articles of the Roman Catholic faith than the king. He is called by Cromwell 'a sacramentary'; one who held the Lord's supper to be only a pious rite appointed to commemorate the death of Christ. 'The king's majesty,' says Cromwell, 'for the reverence of the holy sacrament, did sit and preside at the disputation process of the miserable heretic, who was burned on the 20th November (1537). It was a wonder to see with how excellent majesty his highness executed the office of supreme head;—how benignly he essayed to convert the miserable man; how strong his highness alleged against him."<sup>573</sup>

<sup>571</sup> 1 Harl. Miscel., ed. 1808, p. 226 to 231.

<sup>572</sup> Sir H. Ellis's 3d series of Orig. Let., vol. 3, pp. 202, 203, and p. 207; 7 Collyer's Engl., p. 5 to 54; 3 Hume's Engl., ch. 32, p. 250 to 254; 6 Lingard's Engl., ch. 4, p. 280 to 283.

<sup>573</sup> 2 Mackintosh's Engl., Phila. ed. 1831, p. 187. Henry said: Answer "as touching the sacrament of the altar, is it the body of Christ or no?" The prisoner said: "I answer with St. Augustine," "it is the body of Christ after a certain manner."—"Answer me not



It is stated that in 1538, "the *whole* Bible was first printed in English with marginal notes."<sup>574</sup> Nevertheless Henry VIII—"on whom pope Leo had conferred the title of 'defender of the faith,' before the English parliament made him "Supreme head upon earth of the Church of England"—continued to do much that was unreasonable and absurd. The ex-chancellor Thomas A. Becket having in 1538, been dead more than three hundred years, some of the steps stated to have been taken as to him by Henry VIII, seem, at the present day, exceedingly ridiculous.<sup>575</sup>

21. *Of Cardinal Pole and his connection with persons executed in and after 1539; especially of Sir Nicholas Carew. Statutes of Parliament in 31 Hen. VIII (1539). Especially of ch. 1, as to partition between "joint tenants and tenants in common"; and chapters 6, 8 and 14.*

Of Reginald Pole<sup>576</sup> Mr. Turner has written a chapter, wherein it is said:

"In 1539, his relations were arraigned and executed on a charge of high treason, for conspiring to promote and advance him, and to depose Henry."<sup>577</sup>

out of St. Augustine," said the King; "tell me plainly whether it be?"—"Then I say it is not" was the answer of Lambert. 3 Froude's Engl., ch. 15, pp. 314, 315; *Id.*, ch. 17, p. 473.

<sup>574</sup> "Some of which were omitted on its reprint in 1540. 2 Turner's Hen. VIII, edi. 1827; citing Strype Eccl. Mem. 1, pp. 472-3. On a subsequent page Mr. Turner says of Henry VIII, "It was in 1539 that he gave the first permission by his letters patent to Cromwell." 2 Turner's Hen. VIII, edi. 1827, p. 538. That patent is mentioned *post* in § 23. There was a prohibition against an English edition of the Scriptures except by persons deputed by Cromwell.

<sup>575</sup> 7 Coll. Engl., p. 46. In this reign Becket "was cited to appear in court, and tried and condemned as a traitor." 1 Granger's Biogr. Hist., edi. 3d (1779), p. 44. Mr. Hume says Henry "not

only pillaged the rich shrine dedicated to St. Thomas; he made the Saint himself be cited to appear in court, and be tried and condemned as a traitor: he ordered his name to be struck out of the calendar; the office for his festival to be expunged from all breviaries; his bones to be burned, and the ashes to be thrown in the air." 3 Hume's Engl., ch. 31, p. 244 of N. Y. edi. 1851; 6 Lingard's Engl., ch. 4, p. 275 to 277; 3 Froude's Engl., ch. 15, p. 277 to 279.

<sup>576</sup> "A younger son of Sir Richard Pole by Margaret, Countess of Salisbury, daughter of George, Duke of Clarence, brother to Edward IV." 1 Granger's Biogr. Hist., edi. 3 (1779), p. 157; Cunningham's Lives of Eminent Englishmen, edi. 1838, vol. 2, p. 75.

<sup>577</sup> 2 Turner's Hen. VIII, edi. 1827, ch. 28, p. 421. On Dec. 22, 1539, he was "with eleven others invested with" the "scarlet hat." *Id.*, p. 423.

In a subsequent chapter (ch. 30) Mr. Turner says:

"On the third of November, 1538, the marquis of Exeter and Lord Montague, who was the brother of Cardinal Pole, were suddenly arrested and sent to the Tower. The next day Sir Edward Neville was added; and in a few days more, the countess Margaret, the aged mother of the Poles, was also in custody. They were apprehended on the unexpected discovery and accusation, from his remorse on his attempted suicide, of Sir Geoffrey Pole, son and brother of two of those whom he arraigned."—"On 31st of December the peers were found guilty. Three days after, Neville, with two priests and a mariner and Sir Geoffrey, were tried and convicted; and on 9th January, 1539, all but the last were executed. The aged Margaret, mother of the Poles, and the last of the Plantagenets, was attainted four months afterwards; but the final punishment was suspended for above two years."<sup>578</sup>

"The marquis was the king's cousin german by his mother, being the son of Edward the Fourth's daughter, Katharine."—"Sir Nicholas Carew, the king's master of the horse, being found a counsellor of the marquis on the subject, was convicted, and suffered on 3d March."

So, Secretary Wriothesley wrote to Sir Thomas Wyatt, ambassador in Spain.<sup>579</sup> But Fuller tells differently of this "jolly gentleman"—this Sir Nicholas, who "built the fair house (or palace rather) at Beddington,<sup>580</sup> in" Surrey "county, which by the advantage of the water is a paradise of pleasure."

"Tradition in this family reporteth, how king Henry, then at bowls, gave this knight opprobrious language, betwixt jest and earnest; to which the other returned an answer rather true than discreet, as more consulting therein his own animosity than allegiance. The king, who in this kind would give and not take, being no good fellow in tart repartees, was so highly offended thereat, that Sir Nicholas fell from the top of his favour to the bottom of his displeasure, and was bruised to death thereby. This was the true cause of his execution, though in our chronicles all is scored on his complying in a plot with Henry, marquis of Exeter, and Henry, lord Montague."<sup>581</sup>

<sup>578</sup> *Id.*, p. 482. "She" (Margaret) "was attainted by Parliament with the marchioness of Exeter on 28th April, 1539, but was not beheaded till 27th May, 1541." *Id.*, p. 484, note 73; 2 Mackintosh's *Engl.*, Phila. ed. 1831, p. 192.

<sup>579</sup> 2 Turner's *Hen. VIII.*, ed. 1827, p. 484, note 72.

<sup>580</sup> From Croydon 2, from Sutton 3, from Ewell 6, and from London 11 miles.

<sup>581</sup> 3 Fuller's *Worthies*, ed. 1840, pp. 234, 235.

Of this gentleman who had been "fit for the favour of king Henry the Eighth," there is a fine engraving<sup>582</sup> from the original of Holbein in the collection of the Duke of Buccleugh.<sup>583</sup>

Statutes of the Parliament begun at Westminster on April 28, in 31 Hen. VIII,<sup>584</sup> embrace fourteen chapters; whereof the first is "an act for joint tenants and tenants in common":

"That all joint tenants and tenants in common that now be or hereafter shall be of any estate or estates of inheritance, in their own right or in the right of their wives, of any manors, lands, tenements or hereditaments, within this realm of England, Wales or the Marches of the same, shall and may be coerced and compelled by virtue of this present act, to make partition between them of all such manors, lands, tenements and hereditaments as they now hold or hereafter shall hold as joint tenants or tenants in common by writ de (pticoe) *faciend.*, in that case to be devised in the King our Sovereign Lord's court of chancery, in like manner and form as coparceners by the common laws of this realm have been and are compellable to do; and the same writ to be pursued at the common law."<sup>585</sup>

Of ch. 6, Lord Coke observes that the words "are very well penned against the avarice of corrupt patrons."

"It was resolved *per totam curiam* that if any should receive or take money, fee, reward, or other profit for any presentation to a benefice with cure, although in truth he which is presented be not knowing of it, yet the presentation, admission and induction are void *per expressa verbi statuti* of 31 Hen. VIII, ch. 6;"—"for the statute intends to inflict punishment upon the patron, as upon the author of this corruption, by the loss of his presentation, and upon the incumbent, who came in by such a corrupt patron, by the loss of his incumbency, although that he never knew of it."<sup>586</sup>

<sup>582</sup> In Lodge's Portr., vol. I, No. 10.

<sup>583</sup> Sir Nicholas was buried in the church of St. Botolph, Aldgate, in the family vault of the Lords Darcy of the North." *Id.*

<sup>584</sup> 3 Stat. of the Realm, p. 717 to 743.

<sup>585</sup> 3 *Id.*, p. 718; 1 'Statutes Revised,' edi. 1870, p. 474. In § 2 is a proviso, "that every of the said joint tenants, or tenants in common and their heirs, after

such partition made, shall and may have aid of the other, or of their heirs, to the intent to deraign the warranty paramount, and to recover for the rate as is used between co-parceners after partition made by the order of the common law." *Ibid.*  
<sup>586</sup> 8 Jac. I. *Hutchinson's case*, 12 Rep. 101; 1824, *Fox v. Bishop of Chester*, 2 Barn. and Cress. 635, 4 Dow. and Ry. 93, 9 Eng. C. L.

Upon ch. 8—"an act that proclamation made by the King should be obeyed"<sup>587</sup>—Sir James Mackintosh observes:

"The submissive parliament passed an act, 'that proclamations by the king in council should be obeyed as though they were made by act of parliament, under such pains as such proclamations shall appoint; providing, however, that the punishment shall not extend to death or forfeiture, *except in case of heresy*; and that the proclamation shall not have the power of repealing laws, or of abolishing the ancient usages of the realm. Offenders were to be tried in the court of Star-chamber; and if they took refuge from its mercy in a foreign land were declared to be guilty of high treason."—"The pretext of *heresy* furnished the ready means of crushing any opponent."<sup>589</sup>

Among the acts of the same session are —

Ch. 10. "An act for the placing of the Lords in the Parliament."<sup>589</sup>

Ch. 13. "An act for dissolution of abbeys."<sup>590</sup>

Ch. 14. "*An act abolishing diversity of opinions.*"<sup>591</sup>

The last chapter (ch. 14) became nicknamed 'The Bloody act of Six Articles.'<sup>592</sup> Mr. Turner says:

<sup>587</sup> 3 Stat. of the Realm, p. 726 to 728.

<sup>588</sup> 2 Mackintosh's Engl., Phila. edi. 1831, pp. 199, 200.

<sup>589</sup> 3 Stat. of the Realm, p. 729. After reciting that "the King's Majesty is justly and lawfully Supreme head on earth, under God, of the church of England, and for the good exercise of the said most royal dignity and office hath made Thomas lord Crumwell and Lord Privy Seal his vice-gerent for good and true ministration of justice to be had in all causes and cases touching the ecclesiastical jurisdiction and for the godly reformation and redress of all errors, heresies and abuses in the said church," Section 2 enacts that said Lord Crumwell, having said office and all other persons which hereafter shall have said office shall sit and be placed in Parliament "on the *right* side of the Parliament Chamber and upon the same from that the Archbishop of Canterbury sitteth on, and *above the same Archbishop* and his successors; and shall have voice in every Parliament to assent or dissent as other of the Lords of the Parliament." *Id.*

§ 4. "That the *Lord Chancellor*, the

Lord Treasurer, the Lord President of the King's council and the Lord Privy Seal, being of the degree of barons of the Parliament, or above" shall sit and be placed in Parliament "on the *left* side of the said Parliament Chamber on the higher part of the form of the same side, above all Dukes, except only such as shall happen to be the King's son, the King's brother, the King's uncle, the King's nephew, or the King's brothers' or sisters' sons." *Id.*

§ 6. "That the King's Chief Secretary, being of the degree of a baron of the Parliament, shall sit and be placed afore and above all baronies, not having any of the offices afore-mentioned. And if he be a bishop, that then he shall sit and be placed above all other bishops not having any of the offices above remembered." *Id.* This act is (with ch. 1) in 1 'Statutes Revised,' edi. 1870, p. 474 to 477; and is remarked on in 2 Mackintosh's Engl., Phila. edi. 1831, p. 176.

<sup>590</sup> *Id.*, p. 733 to 739.

<sup>591</sup> *Id.*, p. 739 to 743.

<sup>592</sup> 2 Turner's Hen. VIII, edi. 1827, p. 486, note 80. It is stated that 'Cran-

"No man of principle will attempt to vindicate Henry from the indignant censure of all who can feel and judge, for the act of the six articles, appointing those who denied the real presence to be burnt, and all to be hanged who urged five other opinions."<sup>593</sup>

Sir James Mackintosh says:

"By this act, whoever preaches against the natural body of Jesus Christ being present in the sacrament, or that there remaineth any substance of bread and wine in it, is declared and adjudged a heretic, and shall suffer the pains of death by burning. The fluctuating doctrine of Henry is extended by the second enactment of this clause, which includes for the first time the Lutheran doctrine of consubstantiation."<sup>594</sup>

Since this enactment more than three hundred and forty years have passed; but 'diversity in opinions' is not yet abolished: the result of this experiment in 31 Hen. VIII seems consistent with the conclusion that such kings and legislators as are visible on earth in mortal bodies are not omnipotent.

22. *The King, after contracting to marry Anne of Cleves, was disappointed on seeing her; but married her Jan. 6, 1540.*

After Queen Jane's death a new marriage was thought of by or for the King.<sup>595</sup> Marie, duchess dowager of Longueville and daughter of the duke of Guise, is said to have declined his offer; on the 10th of January, 1538, she married Henry's nephew, James, the Fifth of

mer for three days together in the open assembly opposed these articles boldly." *Id.*, p. 487, note 81. This is creditable to him.

<sup>593</sup> *Id.*, p. 486. "On the six articles he argued personally against six of his bishops for transubstantiation; for the sacrament in one kind; for auricular confession and against the marriage of priests; and he disapproved of Latimer's arguments against purgatory." *Id.*, pp. 537, 538.

<sup>594</sup> "Thus marking the least deviation from the orthodox doctrine on this point as criminal in the highest degree. All those who preach the necessity of the communion in both kinds to laymen, or

for the marriage of priests, or against the observance of vows of chastity, or the propriety of private masses, or the fitness of auricular confession; all priests who shall marry, after having advisedly made vows of chastity, shall suffer the pains of death as felons; and all those who maintain the same errors in any other manner may be imprisoned during the king's pleasure." 2 Mackintosh's *Engl.*, Phila. edi. 1831, p. 187. "Cranmer was compelled by the terrors of this statute to send his wife secretly to Germany." *Id.*, p. 188.

<sup>595</sup> 7 *Coll. Engl.*, pp. 54, 55; 3 *Hume's Engl.*, ch. 32, p. 258 to 261.

Scotland.<sup>596</sup> Henry was a widower more than two years; for which different reasons are assigned.<sup>597</sup> Cromwell's commendation and Holbein's pencil made such impression in favour of Anne of Cleves that a contract for marriage with her was signed at Dusseldorf September 4, 1539. Upon her coming to England, Henry saw her at Rochester (Jan. 2), was "in bitter disappointment," and "considered himself an injured man." However, not seeing 'other remedy,' he 'against' his will, put his 'neck into the yoke': the marriage was at Greenwich Jan. 6, 1540; the new queen was conducted to the palace of Westminster Feb. 4.<sup>598</sup>

23. *As to the statement in Green's Hist. of Engl. Peop. (book 5, ch. 4, vol. 2, p. 159), of Thomas Cromwell being 'successor to Wolsey as keeper of the Great Seal.' This, a mistake. In July, 1536, Cromwell resigned the office of Master of the Rolls for that of keeper of the Privy Seal; and was made Baron Cromwell, Vicar-General and vice-gerent. Of his preferments, power, patronage and correspondence. Among the letters to Cromwell are some from his son Gregory; whereof one is from Calais, Dec. 9, 1539, when Anne of Cleves was expected there. The King's marriage with her was bad for Cromwell. After his high offices and dignities, there was in June, 1540, a great change.*

Mr. Green uses this language:

"It was in fact this system of Catholicism itself that trained men to look without surprise on the *concentration of all spiritual and secular authority in Cromwell. Successor to Wolsey as keeper of the Great Seal*, it seemed natural enough that Cromwell should

<sup>596</sup> 6 Lingard's Engl., ch. 5, p. 329.

<sup>597</sup> *Id.*, ch. 4, pp. 297, 298. Miss Strickland says: "As it was universally reported that his three queens had all come by their deaths unfairly, Katharine of Arragon by poison, Anne Boleyn by the axe, and Jane Seymour for want of proper care in childbed, he found himself so greatly at discount among such princesses, as he deemed worthy of the honors of his hand, that despairing of entering a fourth time into the wedded state, he concealed his mor-

tification by assuming the airs of a disconsolate widower." Queens of Engl., vol. 4, p. 237. A different view is taken in 3 Froude's Engl., ch. 14, pp. 247, 248, ch. 15, p. 280.

<sup>598</sup> 2 Turner's Hen. VIII, edi. 1827, p. 489 to 493; 2 Mackintosh's Engl., Phila. edi. 1831, p. 188; 6 Lingard's Engl., ch. 4, p. 298 to 300; Miss Strickland's Queens of England, vol. 4, p. 244 to 258; 3 Froude's Engl., ch. 17, p. 402, p. 422, and p. 426.

succeed him also as Vicar-General of the Church, and that the union of the two powers should be restored in the hands of a minister of the King.”<sup>599</sup>

In the present chapter it may be seen (in § 9, p. 974, *et seq.*) that Cromwell was *not* “successor to Wolsey as Keeper of the *Great Seal*.” The office of Master of the Rolls to which, as stated in § 12, pp. 987, 988, he was appointed Octo. 8, 1534, was held by him somewhat less than two years; he resigned it July 2, 1536, for that of keeper of the *privy seal* (Rymer xiv, 571); was on the 9th of that month raised to the peerage by the title of Baron Cromwell of Okeham, in the county of Rutland; and in ecclesiastical matters became on the 18th of the same month the king’s representative, with the title of vicar-general and vice-gerent; and sat in synods and convocations above the whole prelacy of the kingdom.<sup>600</sup> Cromwell “had been noted in the exercise of his places of judicature to have used much moderation”;<sup>601</sup> but he was *never* ‘Keeper of the *Great Seal*’ or *Chancellor of England*.

Though not in holy orders, he was presented in 1536 with the prebend of Blewbury, in the church of Salisbury, and in the next year with the deanery of Wells—preferments which he held till his death.<sup>602</sup> Great was his power and patronage; and many were the letters from and to him;<sup>603</sup> especially after he was keeper of the *Privy Seal* and Vicar-General.<sup>604</sup> The letters just referred to, precede (in the order of printing), one mentioning the death of Henry Percy, earl of Northumberland; probably most of them were written

<sup>599</sup> Hist. of Engl. Peop., book 5, ch. 4, vol. 2, edi. 1879, pp. 159, 160.

<sup>600</sup> Foss’s Biogr. Jurid.

<sup>601</sup> 1 State Tr., 439; 3 Seward’s Anecdotes, p. 102.

<sup>602</sup> Foss’s Biogr. Jurid.

<sup>603</sup> Sir H. Ellis’s Orig. Let., 3d series, vol. 2, p. 107 to 116, p. 138 to 144, pp. 155, 156, p. 159 to 167, p. 171, 172, pp. 177, 178, p. 181 to 188, p. 194 to 199, p. 204 to 226, p. 231 to 243, p. 249 to 273, p. 276 to 289, p. 295 to 307.

<sup>604</sup> From John Rastall, lawyer and

printer, brother-in-law of Sir Thomas More, was the letter in *Id.*, p. 308 to 312. From Richard, abbot of Leicester, was the letter (with £40) in *Id.*, p. 313; and the letter, pp. 319, 320. From John, abbot of Leicester, were the letters in *Id.*, p. 320 to 324; from Thomas, abbot of Michelney in *Id.*, p. 334. Other letters to Cromwell are in *Id.*, p. 335 to 372, p. 378 to 382, vol. 3, p. 1 to 19, p. 21 to 23, p. 27 to 42, p. 44 to 52, p. 60 to 74.

before that earl's death, which was on June 20, 1537.<sup>605</sup> In this year a letter addressed to Cromwell as "Chancellor of the ecclesiastical power and jurisdiction of England,"<sup>606</sup> is followed by an account of a meeting in the same year of the conclave which Cromwell held as Vicar-General.<sup>607</sup> To him is attributed the useful introduction into each parish of a register of births, marriages and deaths; and to him was granted a patent prohibiting all persons from printing an English edition of the Holy Scriptures except those who were deputed by him. For years he suited the King's purposes in many respects. He was rewarded with magnificent grants of manors and lands which had belonged to the dissolved houses; and additional dignities were conferred upon him, one of which was the office of chief justice of the forests beyond the Trent.<sup>608</sup>

Among the letters from or to Lord Cromwell after June 20, 1537,<sup>609</sup> are some from his nephew, Richard Cromwell,<sup>610</sup> and his son Gregory, who when young,<sup>611</sup> married Elizabeth, sister of Queen Jane Seymour. To Lord Cromwell and his heirs there was a grant Feb. 15, 1538, of the site and possessions of the Priory of St. Pancras, Lewes,<sup>612</sup> which were of considerable extent. In the Priory House

<sup>605</sup> Sir H. Ellis's 3d series of Orig. Let., vol. 3, p. 75 to 77.

<sup>606</sup> *Id.*, p. 195.

<sup>607</sup> From a curious little volume, supposed to have been printed in 1542, entitled 'of the auctorite of the word of God agaiynst the Bisshop of London' by Alexander Alane Scot. The "account of one of the meetings of conclave" which Sir Henry Ellis has extracted from it, is thought by him to be "probably the only picture of these meetings preserved." *Id.*, p. 196.

<sup>608</sup> Foss's Biogr. Jurid.

<sup>609</sup> In Sir H. Ellis's 3d series of Orig. Let., vol. 3, p. 78 to 105, p. 106 to 134, p. 138 to 146, p. 151, *et seq.* P. 151 to 154 is a letter from "John Bale," "complaining of his sufferings and imprisonment for preaching against popery;" pp. 154, 155, a letter from John Leyland, the antiquary, giving "a character

of John Bale," and soliciting his release from imprisonment. A few years later (Ipswich, 1549,) was published Bale's work on the illustrious writers of Great Britain. Of him there is further information in 1 Harl. Miscel., p. 328 to 364, and 3 Fuller's Worthies, pp. 169, 170.

<sup>610</sup> Sept. 5, 1537. *Id.*, pp. 104, 105. A later letter is in *Id.*, p. 209 to 211.

<sup>611</sup> Supposed to have been born not earlier than 1520. For his infant training he was under the care of the Prioress of Little Marlow in Buckinghamshire. In Sir H. Ellis's third series of Orig. Let., vol. 1, p. 338 to 340, are letters to his father from Gregory when a school-boy; and p. 341 to 345, letters from Henry Dowes, his preceptor, about 1533 or 1534, with details of Gregory's advances in education.

<sup>612</sup> (In Sussex county.) Distant 50 miles from London and 8 from Brighton.



Gregory was by his father allowed to reside after his marriage. Particulars of his arrival at Lewes and of the reception of him and his wife by their neighbours, are given in a letter of April 11.<sup>613</sup> There are subsequent letters from the young husband.<sup>614</sup> From Calais, Dec. 9, 1539, he wrote to his "right loving bed-fellow, at Ledes Castle in Kent," telling her of his being "in health, trusting shortly to hear from you like news, as well of your self as also my little boys, of whose increase and towardness be ye assured I am not a little desirous to be advertised." The letter gives information as to the time at which Ann of Cleves was expected at Calais, and the arrangements for her reception there and passage into England.<sup>615</sup>

The King was better satisfied with what Cromwell did formerly towards the elevation of Jane Seymour than with Cromwell's recommendation of Anne of Cleves. Although Cromwell was created, April 17, 1540, Earl of Essex, and this was followed by his admission into the order of the Garter and his appointment to the office of lord high chamberlain of England, yet in June there was a great change.<sup>616</sup>

24. *In June, 1540, of Anne of Cleves, Katharine Howard and Thomas Cromwell. Against this ex-master of the Rolls there was a bill of attainder; he was beheaded July 28 without due process of law. Christopher Hales, who succeeded Cromwell as Master of the Rolls, retained the place until his death in June, 1541.*

"That beauty and attraction which should take the King's eye in Ann of Cleves not appearing," to him; nor that conversation which should please his ear;<sup>617</sup> and her brother besides excusing himself in the performance of some articles of the treaty, he" determined "to separate himself from her; and listened to accusations against Cromwell."

<sup>613</sup> Sir H. Ellis's 3d series of Orig. Let., vol. 3, p. 192 to 194.

<sup>614</sup> One of June 29 is in *Id.*, pp. 208, 209.

<sup>615</sup> *Id.*, p. 251 to 254. P. 258 to 264 is a letter to Gregory from his old preceptor.

<sup>616</sup> Foss's Biogr. Jurid.

<sup>617</sup> 1 State Tr., pp. 433, 434. "Henry had been used to the society of women of superior intellect and polished manners. Such had been Katharine of Aragon; such Anne Boleyn; and Jane Seymour, if she lacked the mental dignity of the first, or the genius and wit of the second, made up for both in the

Judging from stories of Cromwell which lingered among his friends, Mr. Green supposes,

“He was a generous, kindly-hearted man, with pleasant and winning manners, which atoned for a certain awkwardness of person; and with a constancy of friendship which won for him a host of devoted adherents.”<sup>618</sup>

Cromwell's head, of which there is an engraving from the original of Holbein,<sup>619</sup> was soon to be taken<sup>620</sup> in a sense different from that in which Holbein took it. In June, 1540, there was talk of the King's affection for Katharine Howard, niece of the Duke of Norfolk; Anne of Cleves was sent to Richmond; and Cromwell was arrested at the council table.<sup>621</sup>

The statement that Cranmer, “in a very earnest and persuasive letter, endeavoured to obtain from the king the preservation of Cromwell's life,” is accompanied by the observation that “the archbishop, like Atticus, never forsook his friends in their distress; but like that famous Roman he too often bent the knee to their oppressors.”<sup>622</sup> It may be that in the time of Cromwell's distress the archbishop's persuasions on his behalf were without benefit to him, because of what was found among his papers;<sup>623</sup> and because of what Cromwell had done as to bills of attainder against others.<sup>624</sup>

It was about a month before his own arrest that Cromwell asked the judges whether the parliament had a power to condemn persons

insinuating softness, which was, no doubt, the true secret of her influence over Henry's mind.” Miss Strickland's *Queens of Engl.*, vol. 4, p. 256.

<sup>618</sup> Short Hist., ch. 6, p. 530; Hist. of Engl. Peop., book 5, ch. 4, vol. 2, edi. 1876, p. 166.

<sup>619</sup> In the collection of Sir Thomas Constable, Bar't, 1 Lodge's Portr., vol. 1, No. 11.

<sup>620</sup> From Cromwell there had been defence of Henry's tyranny. 2 Froude's Engl., ch. 9, p. 382 to 385. Of it he was soon to be a victim.

<sup>621</sup> 7 Coll. Engl. p. 56 to 59; 3 Hume's Engl., ch. 32, p. 263 to p. 265; 6 Lin-

gard's Engl., ch. 4, p. 303 to 308; 2 Mackintosh's Engl., Phila. edi. 1831, pp. 189, 190; Miss Strickland's *Queens of Engl.*, vol. 4, p. 260; 3 Froude's Engl., ch. 17, p. 450, *et seq.*

<sup>622</sup> 2 Mackintosh's Engl., Phila. edi. 1831, p. 190.

<sup>623</sup> It is said of Cromwell, that “among his papers had been found” “Clandestine correspondence with the princes of Germany.” 6 Lingard's Engl., ch. 4, pp. 302, 303, and p. 308.

<sup>624</sup> Green's Short Hist., ch. 6, § 6, p. 350; Hist. of Engl. Peop., book 5, ch. 4, vol. 2, edi. 1879, pp. 165, 166.

accused without a hearing'; and they replied, 'That it was a nice and dangerous question, for law and equity required that no one should be condemned unheard; but the parliament being the highest court of the realm, its decision could not be disputed.' On this reply a bill of attainder was (on Cromwell's imprudent and improper suggestion) enacted against the Countess of Salisbury and the Marchioness of Exeter.<sup>625</sup> Now this weapon of despotism was introduced against him. But neither against them nor against him could it well be used unless *each* house of parliament passed the bill; nor then unless it was the King's will that it should have effect. Observing that "the condemnation of a man unheard is a case in which the strongest presumptions against the prosecution are warranted," Sir James Mackintosh says:

"We do not know the witnesses who gave testimony; as we do not even know whether there were any examined; and indeed know nothing but that he was *not* heard in his own defence."<sup>626</sup>

Dr. Lingard supposes that the bill of attainder against Cromwell "passed through the House of Lords, and *probably* through the House of Commons, without a dissentient voice."<sup>627</sup> But as to the bill the two Houses differed;<sup>628</sup> and there is an absence of proper evidence that the same bill did pass through each house and become an act of parliament; for "*the act is not printed in the statute book.*" This is admitted by Mr. Froude in so many words. Nor is the force of such admission destroyed by his saying "it is in very good condition on the parliament roll"; and "Burnet has placed it among his Collectanea."<sup>629</sup> Under the royal commission of May 23, 1806, the commissioners proceeded to carry into effect so much of the measures recommended by the Commons "as related to the preparing and printing a complete and authentic collection of the statutes of the realm";<sup>630</sup> in that 'complete and *authentic* collection of the

<sup>625</sup> 6 Lingard's Engl., ch. 4, pp. 289, 290; Miss Strickland's Queens of Engl., vol. 4, pp. 259, 260.

<sup>626</sup> 2 Mackintosh's Engl., Phila. edi. 1831, p. 190.

<sup>627</sup> 6 Lingard's Engl., ch. 4, p. 304.

<sup>628</sup> Lodge's Portr., vol. 1, No. 11.

<sup>629</sup> 3 Froude's Engl., ch. 17, p. 452.

<sup>630</sup> 1 Stat. of the Realm, p. xvii.

statutes" there is *no* statute for or concerning the attainder of Thomas Cromwell. The objection that one who should have been tried by due process of law (2 Inst., 50), was not so tried, is not answered by saying, "In fairness" he "should have been tried; but it would have added nothing to his chances of escape"!<sup>631</sup> That does *not* justify his being deprived of life without 'due process of law.' If at Tower Hill, on July 28, he was beheaded under an *illegal* order of the monarch, the individual who executed that *illegal* order was responsible, even although the constitution would allow of no proceeding against the monarch himself."<sup>632</sup>

"Zealously devoted from his first introduction at court to the royal interests, disregarding public obloquy in his efforts to promote them, and evidencing by all his acts the most sincere affection for his master," Cromwell's "death by that master's hand" has added to the loathing caused by much "of Henry's career" in Cromwell's life.<sup>633</sup>

On the scaffold Cromwell began as others had done, in what looks as or like a formula encouraged by authority in that despotic reign: "I am come hither to die, and not to purge myself, as some think peradventure that I will"<sup>634</sup>

*Christopher Hales*,<sup>635</sup> who succeeded Cromwell as Master of the

<sup>631</sup> 3 Froude's Engl., ch. 17, p. 455.

<sup>632</sup> *Stockdale v. Hansard, &c.*, 2 Per. and Dav. 211; 9 Adol. and El., 36 Eng. C. L.; cited at p. xi of Preface to 6 Rob. Pract.

<sup>633</sup> Foss's Biogr. Jurid.

<sup>634</sup> 1 State Tr., 437. "Rapin observes that the care Cromwell took when he came to die, to say nothing which might offend the King, proved to the advantage of his son." *Id.*, 440. As Lord Cromwell of Okeham, Gregory took his seat in the House of Peers Jan. 16, 1541. Sir H. Ellis's Orig. Let., 3d series, vol. 3, p. 193. Thomas Cromwell's sister married a Williams, whose son, Sir Richard Williams, one of King Henry's privy chamber, and afterwards constable of Berkeley castle, assumed the surname of Cromwell, and was the

great grandfather of the Protector Oliver Cromwell. Foss's Biogr. Jurid.

<sup>635</sup> Derived his name from a place so called in Norfolk, where Roger de Hales possessed property in the reign of Henry II. Before the close of Edward III's reign the family had removed into Kent, and was settled at Halden, near Tenterden. Of this family was Robert de Hales, prior of St. John of Jerusalem and treasurer of England (under Richard II), who was murdered in 1381; from his brother, Sir Nicholas, descended no less than three eminent lawyers, who graced the judicial bench—Christopher and John in the reign of Henry VIII, and James in that of Edward VI. Christopher was son of Thomas, the younger brother of John's father; so that the two judges in Henry's reign

Rolls on July 10, 1536, retained the place until his death—in June, 1541.<sup>636</sup>

25. *Statutes of Parliament at July session in 32 Hen. VIII (1540.) In the general pardon (ch. 49) there were exceptions; Robert Barnes and others suffered cruel deaths by burning. Under ch. 25 the marriage with Anne of Cleves was dissolved.*

Statutes of the Parliament continued from April session in 31 Hen. VIII until July 24, in the thirty-second year of the reign, embrace fifty-one chapters,<sup>637</sup> whereof the fifth, seventh, ninth, twenty-eighth, thirtieth, thirty-second, thirty-fourth, thirty-seventh, thirty-eighth and fortieth chapters are in 1 'Statutes Revised,' edi. 1870. The first chapter is "an act how land may be willed by testament";<sup>638</sup> the second is of "limitation by prescription";<sup>639</sup> the fifth is as to "contentation of debts upon executions";<sup>640</sup> the seventh is as to "payment of tithes and offerings";<sup>641</sup> and the ninth is against maintenance and embracery, "buying of titles, &c."<sup>642</sup> Chapter 21 is of "Trinity term";<sup>643</sup> ch. 25 "the dissolution of the pretended marriage with the Lady Anne of Cleves";<sup>644</sup> and ch. 26 "concerning Christ's religion."<sup>645</sup>

were first cousins. His (Christopher's) mother was Alicia, daughter of Humphrey Eveas. Receiving his legal education at Gray's Inn, Christopher rose to be an ancient in 1516, and reader in 1524. He became solicitor-general August 14, 1525; and attorney-general June 3, 1529. As such he prosecuted Wolsey by an indictment, to which the cardinal made no defence; and appeared for the King against Sir Thomas More and Bishop Fisher; the trials of Queen Anne Boleyn and those charged with being implicated with her occurred during the last few months of his tenure of the same office. Foss's Biogr. Jurid.

<sup>636</sup> He was buried at Hackington, or St. Stephen's, near Canterbury. His large possessions, many of which were granted to him by the King on the dissolution of the monasteries, were divided

among his three daughters by his wife Elizabeth, daughter of John Cauntton, an alderman of London. *Id.*

<sup>637</sup> 3 Stat. of the Realm, p. 744 to 825.

<sup>638</sup> *Id.*, p. 744 to 746.

<sup>639</sup> *Id.*, pp. 747, 748.

<sup>640</sup> *Id.*, p. 750; 1 'Statutes Revised,' pp. 477, 478; Co. Lit., 290 a; 2 Tidd's Pr., 1136, 1137.

<sup>641</sup> 3 Stat. of the Realm, pp. 751, 752; 1 'Statutes Revised,' p. 479 to 481; Co. Lit., 159 a.

<sup>642</sup> 3 Stat. of the Realm, pp. 753, 754; 1 Stat. Rev., p. 481 to 483; Co. Lit., 369 a.

<sup>643</sup> 3 Stat. of the Realm, pp. 773, 774.

<sup>644</sup> *Id.*, p. 781 to 783. In the margin are the following words: 1. "Evil of doubts as to succession of the crown"—"Doubts as to the validity of the King's marriage with the Lady Anne Cleves;

Chapter 28 is "an act that lessees may enjoy their fermes";<sup>646</sup> ch. 30, of "misleading, jeofails, &c.";<sup>647</sup> ch. 31, "for avoiding of recoveries by collusion";<sup>648</sup> ch. 32, of "joint-tenants for life or years";<sup>649</sup> ch. 33, "wrongful disseisin to be descent";<sup>650</sup> ch. 34, of "grantees of reversions."<sup>651</sup>

Chapter 37, "for recovering of arrearages by executors and administrators,"<sup>652</sup> gives a remedy "for the recovery of arrearages of rents in certain cases where there lay no remedy at the common law and giveth further remedy in some cases where at the common law there was some remedy"; and "hath been well and beneficially expounded."<sup>653</sup> Chapter 38, is "as to marriages, and entitled concerning pre-contract and degrees of consanguinity."<sup>654</sup> Ch. 40 is "concerning physicians";<sup>655</sup> ch. 42, "concerning barbers and chirurgeons";<sup>656</sup> and ch. 46, "The court of ward."<sup>657</sup>

referred at the desire of the Temporal Lords and Commons to the prelates and clergy in Synod."—"The tenour of the instrument containing the decision of the said Synod; declaring the said marriage to be invalid, &c.; Lady Anne of Cleves's assent, &c."—"The said marriage declared and enacted to be invalid, &c."—"Lady Anne not to be called Queen. Her jointure, &c., repealed." 2. "Penalty of High Treason on persons asserting the validity of the said marriage; forfeiture of lands, &c., thereon. General saving." 3. "Pardon of all acts done for dissolving the said marriage."

<sup>645</sup> *Id.*, pp. 783, 784; 7 Collyer's Engl., 66; 3 Hume's Engl., ch. 32, pp. 275, 276; 6 Lingard's Engl., ch. 4, pp. 307, 308.

<sup>646</sup> 3 Stat. of the Realm, p. 784 to 786; 1 Statutes Revised, p. 483 to 485.

<sup>647</sup> 3 Stat. of the Realm, pp. 786, 787; 1 Statutes Revised, p. 486.

<sup>648</sup> 3 Stat. of the Realm, p. 787.

<sup>649</sup> *Id.*, pp. 787, 788; 1 Statutes Revised, p. 487. In the margin are these words: 1 "St. 31 Hen. VII, c. 1; for

partition by joint-tenants, and extended to persons having particular estates for life or years;" 2. "Such partition shall not prejudice others not parties." As to this statute there may be reference to Co. Lit., 169 *a*, and 187 *a*.

<sup>650</sup> 3 Stat. of the Realm, p. 788.

<sup>651</sup> *Id.*, pp. 788, 789; 1 'Statutes Revised,' ed. 1870, p. 487 to 489; Co. Lit., 215 *a*.

<sup>652</sup> 3 Stat. of the Realm, p. 791; 1 'Statutes Revised,' p. 489 to 491.

<sup>653</sup> Co. Lit., 162 *a*, 162 *b*, 351 *b*; Thomas's Co. Lit., 1, 458 *n* (20), 3, 250 *n*. (4), (5), 255, and *n*. (D), 256, and *n*. (4), (5), 257, and *n*. (E).

<sup>654</sup> 3 Stat. of the Realm, p. 792; mentioned in Co. Lit. 235 *a*; and repealed by Stat. 2 and 3 Edw. VI, c. 23, § 1.

<sup>655</sup> 3 Stat. of the Realm, p. 793; 1 'Statutes Revised,' p. 492 to 494; Paris and Fonblanque's Med. Jurispr., ed. 1823, vol. 3, Appendix, p. 14 to 16.

<sup>656</sup> *Id.*, p. 17 to 22; 3 Stat. of the Realm, p. 794.

<sup>657</sup> *Id.*, p. 802 to 807; Co. Lit., 77 *a*, 77 *b*; 4 Inst., 188.

Chapter 40 is "The King's general pardon";<sup>658</sup> out of which there is in section 6 an exception of certain matters,<sup>659</sup> and in section 10 an exception of certain persons by name,<sup>660</sup> among whom, besides those named below, are Robert Barnes, Thomas Garrard and William Jerome. Mr. Froude supposes that before this time it had been enacted that these three should be 'attainted of heresy' and adjudged 'abominable and detestable heretics,' and 'suffer pains of death by burning or otherwise as shall please the King's majesty.'<sup>661</sup> It seems to have been the King's pleasure that their punishment should be cruel, "abominable and detestable"; it pleased his majesty that they should "suffer pains of death by *burning*"; and they so suffered at Smithfield on the 30th of July, 1540.<sup>662</sup>

"Henry, while he thus persecuted the Protestants, used the same rigour, except burning, against those of the church of Rome who denied his supremacy; whence a foreigner who was then in England observed that those who were against the pope were burned, and those who were for him were hanged."<sup>663</sup>

Under ch. 25 (of the statutes of July, 1540), the marriage with the Lady Anne of Cleves was dissolved; she acquiescing in its dissolution.<sup>664</sup> Henry made visits to her at her palace at Richmond on the 6th of August and afterwards.<sup>665</sup>

<sup>658</sup> 3 Stat. of the Realm, p. 809 to 812; construed in *Auditor Curle's case*, 11 Rep., 2 b.

<sup>659</sup> One of which is "all and all manner of heresies and erroneous opinions touching or concerning plainly, directly and "oonely the most hooly and blessed sacrament of the altar."

<sup>660</sup> Thomas Crumwell, earl of Essex, Margaret, countess of Saulsbury—"Richard Fetherston, Thomas Abell, Edward Powell.

<sup>661</sup> 3 Froude's Engl., ch. 17, p. 473.

<sup>662</sup> "Great pity it was that such learned men should be so cast away without examination, neither knowing what was laid to their charge, nor never called to answer." Hall Chron., edi. 1548; cited in Sir H. Ellis's 3d series of Orig. Let.,

vol. 3, pp. 264, 265.

<sup>663</sup> Barnes, Jerome and Gerrard, were carried on three hurdles to the place of execution; and along with them was placed a Catholic on each hurdle, who was also executed for his religion. These Catholics were Abel, Powell and Featherstone." 7 Coll. Engl., pp. 60, 61; 3 Hume's Engl., ch. 32, p. 267; 6 Lingard's Engl., ch. 4, pp. 309, 310; 2 Turner's Hen. VIII, edi. 1827, p. 487. "In 1543 other persons were *burnt* for their opinions." *Ibid.*

<sup>664</sup> 2 Mackintosh's Engl., Phila. edi. 1831, p. 189; 6 Lingard's Engl., ch. 4, p. 304 to 307; Miss Strickland's Queens of Engl., vol. 4, p. 260 to 267; 3 Froude's Engl., ch. 17, p. 459.

<sup>665</sup> Miss Strickland's Queens of Engl.,

26. *Of Katharine Howard before her marriage to the King Aug. 8, 1540, and after that marriage. Action of Parliament in 33 Hen. VIII (1541-2). More consideration for this Queen by the King and by the Lord Chancellor Audley than by the Privy Council. By their advice she was deprived of life without due process of law Of statutes made by Parliament at the session in 33 Hen. VIII (1541-2). Under chapter 39, relief for matter in equity. Position of William Paget in 1541, 1542 and 1543. In Scotland, in Dec. 1542, death of James the Fifth; and birth of the Princess Mary.*

Katharine Howard was married to the King before or on the 8th of August, 1540: on that day she was introduced by him at Hampton court as his queen; then in the chapel she took her seat in the royal closet by his side.<sup>666</sup> Of his married life with her more than a year had elapsed when, on the 30th of October, 1541, he requested his confessor, the bishop of Lincoln, to prepare a public form of thanksgiving for being blessed with so loving, dutiful and virtuous a queen.<sup>667</sup> Next morning he received concerning her information which at first he did not believe to be true, and which after a day's investigation distressed him exceedingly. The charge of misconduct went back to her childhood.<sup>668</sup> She was the fifth child and second daughter of Lord Edmund Howard, who attended Mary Tudor to France in 1514. Supposing he married soon afterwards, the earliest

vol. 4, p. 267 to 270. It is stated that on the death of Anne Boleyn's father, "whom Henry had created Earl of Wiltshire, Hever became the property of the crown, and when subsequently he had divorced Anne of Cleves, it was granted to her with the manor for the term of her natural life, so long as she should remain in England. Here she resided, and several of her letters are dated from the castle, where she died." Penny Magazine for 1838, July, p. 284. The day of her death was 16 July, 1557, according to Granger. 1 Biogr. Hist., p. 79 of edi. 1779. As to the place of her death there are conflicting accounts.

Miss Strickland states that she "died at the palace of Chelsea," and was "buried near the High altar of Westminster abbey, in a place of great honour, at the feet of King Sebert, the original founder." Queens of Engl., vol. 4, p. 278.

<sup>666</sup> 7 Coll. Engl., p. 59; 6 Lingard's Engl., ch. 4, p. 310; Miss Strickland's Queens of Engl., vol. 4, p. 293.

<sup>667</sup> *Id.*, p. 304.

<sup>668</sup> 1 State Tr., 446 to 452; 7 Coll. Engl., p. 62 to 65; 3 Hume's Engl., ch. 32, p. 271 to 274; 6 Lingard's Engl., ch. 4, p. 310 to 317.



date given for Katharine's birth is 1521 or 1522. She was in early childhood when her mother died; her father permitted his step-mother, the duchess-dowager of Norfolk, to take upon herself the charge and bringing up of this young girl. In a splendid mansion she became a neglected dependent. Miss Strickland says:

"The duchess of Norfolk was so perfectly unmindful of her duties to her orphan charge that Katharine was not only allowed to associate with her waiting women, but compelled at night to occupy the sleeping apartment that was common to them all; unhappily they were persons of the most abandoned description, and seem to have taken a fiendish delight in perverting the principles and debasing the mind of the nobly born damsel who was thrown into the sphere of their polluting influence."—Katharine, "before she had even entered her teens, became the object of illicit passion to a low born villain in the household of the duchess, named Henry Manox."<sup>669</sup>

After a time the Duchess became suspicious of the conduct of Francis Derham; he fled to Ireland; and the household of the Duchess was improved.

"Katharine, severed from all evil associates, acquired, as she advanced towards womanhood, the retiring grace and feminine reserve natural to that season in life. She even became remarkable for her modest and maidenly deportment. When Derham found means to return clandestinely from Ireland, and endeavoured to renew his intercourse with her, she positively refused to have any communication with him."<sup>670</sup>

Yet his attachment to her produced fatal results.<sup>671</sup> After the King's divorce from Anne of Cleves and his passion for Katharine Howard, "she found herself beset with those persons, whom of all the world it was most to her interest to have kept at a distance."<sup>672</sup>

Notwithstanding their statements, there is a "lingering tenderness of the King for her who had been so lately the object of his adoring fondness";<sup>673</sup> there is a "yearning in the King's heart towards her"; but the chance "of his ever receiving Katharine again as his Queen" is very slight, after his ministers at home have been allowed to send to his ministers abroad a circular announcing her misconduct.<sup>674</sup>

<sup>669</sup> Miss Strickland's *Queens of Engl.*,  
vol. 4, pp. 282, 283.

<sup>670</sup> *Id.*, pp. 288, 289.

<sup>671</sup> *Id.*, p. 289.

<sup>672</sup> *Id.*, p. 293.

<sup>673</sup> *Id.*, p. 309.

<sup>674</sup> *Id.*, pp. 312, 313.

Miss Strickland's narrative of the circumstances before Katharine's marriage to the King, and of her deportment during that marriage,<sup>675</sup> is exceedingly interesting; and is worthy of being compared with what appears elsewhere,<sup>676</sup> as to the action of parliament in the session begun at Westminster on the sixteenth day of January, in 33 Hen. VIII (1541-2).<sup>677</sup> "The bill of attainder of Mrs. Katherin Howarde, late Queen of England, and divers other persons, her complices," was read a first time on the 21st of January. On the 28th, the Lord Chancellor *Audley* reminded the peers "how much it concerned them all not to proceed too hastily with" that bill "which had been yet read only once among them," bidding them remember "that a queen was no mean or private person, but a public and illustrious one. Therefore, her cause ought to be judged in a manner that should leave no room for suspicion of some latent quarrel, and that she had not liberty to clear herself, if perchance by reason or counsel she were able to do it." Hence he proposed "that a deputation as well of the commons as of the lords, should go to the queen, partly to tell her the cause of their coming, and partly, in order to help her womanish fears, to advise her to have presence of mind sufficient to say anything to make her cause the better." He added "that it was just that a princess should be tried by equal laws with themselves, and expressed his assurance that it would be most acceptable to her most loving consort, if the queen could clear herself in this way." In the meantime the bill against her was suspended. Miss Strickland says:

"This equitable proposition of the Lord Chancellor was disapproved and negated by the privy council, by whom it was determined that no opportunity, however limited, should be granted to Katherine, of either speaking in her own defence, or impugning the testimony of the witnesses, on whose unsifted assertions, she was to be brought to the block. Whatever the conduct of the queen had been, she was, in this instance, the victim of the most unconstitutional despotism; and the presumption may be reasonably drawn, from the illegality and unfairness of the proceedings of the privy council that the evidence against her could not have been substan-

<sup>675</sup> *Id.*, p. 309 *et seq.*

128.

<sup>676</sup> 4 Froude's Engl., ch. 19, p. 125 to

<sup>677</sup> 3 Stat. of the Realm, p. 826.

tiated, if investigated, according to the common forms of justice.”<sup>678</sup>

On the 30th of January the course of proceeding which the council advised as to the Queen was communicated to parliament. Without process for obtaining witnesses in her favour or being confronted with the witnesses against her—without having the assistance of counsel or even permitted herself to speak in her defence—the bill of attainder was passed through both houses on or before the 8th of February; on the 10th the Queen was conveyed by water from Sion to the Tower of London; the King’s assent to the bill was given on the 11th; and on the 13th she was led to the scaffold and suffered death.<sup>679</sup>

Among the thirty-nine chapters of statutes made by Parliament at the session in 33 Hen. VIII (1541-2),<sup>680</sup> are several which are in 1 ‘Statutes Revised,’ edi. 1870, p. 494, *et seq.*<sup>681</sup> To one of these—ch. xx—“An act for due pces to be had in High Treason in cases of lunacy or madness,” there is a note saying:

“The original of this act is preserved at the Parliament office in the bundle of the 37th year of this reign, and entered in the Calendar of that year; together with the act for the attainder of Catharine Howard, ch. xxi of this year; and the commission for passing both of these acts; to all which the great seal is affixed.”

<sup>678</sup> Queens of England, vol. 4, pp. 321, 322; 1 State Tr., p. 449, *et seq.*; 4 Froude’s Engl., ch. 19, p. 135 to 138.

<sup>679</sup> Miss Strickland’s Queens of Engl., vol. 4, p. 322 to 325. “Wever gives the following:” “In St. Peter’s chapel of the Tower, very near the relics of Anne Boleyn, lieth interred the body of Katharine, the fifth wife of Henry VIII, the daughter of Edmund and niece to Thomas Howard, Duke of Norfolk. It is verily believed, and many strong reasons are given, both by English and foreign writers that neither this Queen Katharine nor Queen Anne were any way guilty of the breach of matrimony whereof they were accused.” *Id.*, p. 328. Commenting on the ambiguous language

used by Suffolk and others in the House of Lords, and by Katharine on the scaffold, Dr. Lingard says, “Was not that particular form enjoined by authority that she might not seem to impeach ‘the King’s justice?’ On a review of the original letters in the State papers, of the act of attainder and of the proceedings in Parliament, I see no sufficient reason to think her guilty.” 6 Lingard’s Engl., ch. 4, p. 317, *note*.

<sup>680</sup> 3 Stat. of the Realm, p. 826 to 892.

<sup>681</sup> Edi. 1870, p. 494, *et seq.* Ch. 9, “an act for maintenance of artillery and debarring of unlawful games,” is in *Id.*, p. 494 to 498; ch. 12, “an act for murder and malicious bloodshed within the court,” is in *Id.*, p. 498 to 504.

In the same volume (of Stat. Rev.), p. 505, is ch. xxi. "The bill of attainder of Mrs. Katherin Hawarde, late Queen of England and divers other persons her complices"; to which there is this note:

"From the original act in the Parliament office in the bundle of the *thirty-seventh year* of this reign. See the note at the beginning of this year;<sup>682</sup> and note to chapter xx."

In the same volume (of Stat. Rev.) p. 506, are the subjoined chapters;<sup>683</sup> after which, p. 507 to 518, is "The bill for the establishment of the court of surveyors"; which provides in § 37 that suits for the King's debts shall be in the courts of Exchequer or other specified courts,<sup>684</sup> and has a subsequent section which is "usually called, in the Exchequer, the statute of *equity*, and which empowers the judges to admit any matter of *equity* in discharge of any debts to the King."<sup>685</sup> It may have been numbered 79, but is now No. 55; it provides as follows:

"That if any person or persons of whom any such debt or duty is or at any time hereafter shall be demanded or required, allege, plead, demand or shew in any of the said courts, good, perfect, sufficient cause and matter in law, *reason or good conscience* in bar or discharge of the said debt or duty, or which such person or persons ought not to be charged or chargeable to or with the same, and the same cause or matter so alleged, pleaded declared or shewed, sufficiently proved in such one of the said courts as he or they shall be impleaded, sued, vexed or troubled for the same, that then the

<sup>682</sup> P. 494. "It appears by an extract from the Parliament Roll given in the Statutes of the Realm, and a foot-note, (volume 3, p. 826,) that all the printed editions contain thirty-nine acts of this session, but that only twenty-two of these are on the roll, and that the remaining seventeen are printed in the Statutes of the Realm from the original acts preserved in the Parliament office. It also appears that in all the printed editions the numbers of the several chapters that are on the roll (which numbers are adopted in the Statutes of the Realm) disagree with those on the roll except as to chapter I."

<sup>683</sup> Ch. xxiv. "An act that no man shall be Justice of Assize in his own country."

Ch. xxvii. "An act for leases of Hospitals, colleges, and other corporations

to be good and effectual with the consent of the more partie."

<sup>684</sup> Gould, J., who had been a baron of the Exchequer, was delivering the opinion of the Common Pleas when in 19 Geo. III he said: "About fifty sections of this statute are now entirely obsolete by the abolition of the several courts to which they relate. About twenty-five more affect only the King, auditors, collectors, and other revenue officers, or the process in the Exchequer and Duchy courts, which have survived the other four." *Uppom v. Sumner*, 2 W. Bl. 1295.

<sup>685</sup> S. C., 2 W. Bl. 1295.

said courts and every of them shall have full power and authority to accept, adjudge and allow the same proof and wholly and clearly to acquit and discharge all and every person and persons that shall be so impleaded, sued, vexed or troubled for the same.”<sup>686</sup>

For matter *in equity*, there was under this statute, relief in 39 and 40 Eliz., upon a hearing in the Exchequer Chamber.<sup>687</sup>

William Paget is mentioned in § 10, p. 978.

“In 1541 the offices of Clerk of the Privy Council, and Clerk of the Signet were conferred on him, as was soon after that of Clerk of the Parliament for life; in the following year he was sent ambassador into France; and in 1543, in which year he was knighted, was appointed one of the two principal Secretaries of State.”<sup>688</sup>

Buchanan tells of hostilities between the English and Scotch in 1542, and how “the loss of the army” affected James V,<sup>689</sup> with ‘indignation, rage and grief.’

“His bodily strength being worn out by want and watching, and his mind distracted by anxiety and care, he died on the 30th of December, leaving a daughter only five days old, heiress of the throne. He was buried on the 14th of January, in the abbey of Holyrood house, near the remains of Magdalen, his former wife.”<sup>690</sup>

27. *Statutes made in 34 and 35 Hen. VIII (1542-3); whereof ch. 4 is against such persons as do make bankrupt; ch. 5 is “explanation of the statute of wills”; and ch. 13, recognition of principles which are the basis of the elective part of the constitution. Mackintosh’s observations on ch. 13; and on ch. 26.*

In the session of parliament holden at Westminster by proroga-

<sup>686</sup> 3 Stat. of the Realm, pp. 891, 892;  
† ‘Statutes Revised,’ ed. 1870, p. 517.

<sup>687</sup> Sir Thomas Cecil’s case, 7 Rep., 89.

<sup>688</sup> Lodge’s Portr., vol. 2, No. 12.

<sup>689</sup> Mentioned in § 19, p. 1026.

<sup>690</sup> Hist. of Scotland, Aikman’s ed. (1824,) vol. 2, p. 323. As to the bones of James V, there is at the end of this volume, in Appendix B, information for the curious.

As to the particular day of Dec. on which the Princess Mary was born, and

how many days old she was at her father’s death, statements vary. 7 Coll-  
yer’s Engl., p. 70; 3 Hume’s Engl.,  
ch. 33, p. 281; 6 Lingard’s Engl., ch. 5,  
p. 381. Encyclop. Am., tit. *Mary Stuart*.  
They vary also as to the day on which  
she was crowned Queen of Scotland;  
but her coronation seems to have been  
before she was a year old. Buchanan’s  
Hist. of Scotland, Aikman’s ed. (1824,)  
vol. 2, p. 334, note; 4 Froude’s Engl.,  
ch. 20, p. 227.

tion on the twenty-second day of January, in the 34th, and continued until the twelfth day of May, in the 35th year of Hen. VIII (1542-3), there were statutes embracing twenty-eight chapters;<sup>691</sup> among which are the following:

Ch. 1. "An act for the advancement of true religion, and for the abolishment of the contrary."<sup>692</sup>

Ch. 2. "An act concerning collectors and receivers."<sup>693</sup>

Ch. 4. "An act against such persons as do make bankrupt."<sup>694</sup>

Ch. 5. "An act for the explanation of the statute of wills."<sup>695</sup>

Ch. 8. "An act that persons being no coen Surgeons may minstre medicines outwards."<sup>696</sup>

Ch. 9. "An act for the preservation of the river of Severn."<sup>697</sup>

Ch. 13. "An act for knights and burgesses to have places in the parliament for the county palatine and city of Chester."<sup>698</sup>

Ch. 20. "An act to *enbarre* feigned recoveries of lands wherein the King's majesty is in reversion."<sup>699</sup>

Ch. 23. "An act for the due execution of proclamations."<sup>700</sup>

Those chapters which are in 1 'Statutes Revised,'<sup>701</sup> are 2, 8, 9, 13 and 20.<sup>702</sup>

Speaking of "some direct benefits the constitution owes to this reign," Sir James Mackintosh says:

"The act which established a parliamentary representation in so considerable a territory as Wales, may be regarded as the principal reformation in the composition of the House of Commons since its legal maturity in the time of Edward I. That principality had been divided into twelve shires; of which eight were ancient,<sup>703</sup> and four owed their origin to a statute of Henry's reign.<sup>704</sup> Knights, citizens and burgesses were now directed to be chosen and sent to parliament from the shires, cities and burghs of Wales.<sup>705</sup> A short time before,

<sup>691</sup> 3 Stat. of the Realm, p. 893 to 953.

<sup>692</sup> *Id.*, p. 894 to 897; 6 Lingard's Engl., ch. 4, pp. 317, 318.

<sup>693</sup> 3 Stat. of the Realm, pp. 898, 899.

<sup>694</sup> *Id.*, p. 899, 900.

<sup>695</sup> *Id.*, p. 900 to 904; 7 Jac. 1, *Earl of Cumberland's* case, 13 Rep., 49; 1 Thomas's Co. Lit., 294, and note (F); 2 *Id.*, 644; 1 Jarm. on Wills, 27, 57.

<sup>696</sup> 3 Stat. of the Realm, p. 906; Paris and Fonblanque's Med. Jurispr., edi. 1823, vol. 3 Appendix, pp. 23, 24.

<sup>697</sup> 3 Stat. of the Realm, pp. 906, 907.

<sup>698</sup> *Id.*, p. 911.

<sup>699</sup> *Id.*, pp. 919, 920.

<sup>700</sup> *Id.*, p. 923.

<sup>701</sup> Edi. 1870, p. 520 to 524.

<sup>702</sup> To-wit: ch. 2, p. 518 to 520; ch. 8, pp. 520, 521; ch. 9, p. 521; ch. 13, p. 522; and ch. 20, pp. 523, 524.

<sup>703</sup> Glamorgan, Carmarthen, Pembroke, Cardigan, Flint, Carnarvon, Anglesea and Merioneth.

<sup>704</sup> Radnor, Brecknock, Montgomery and Denbigh. 27 Hen. VIII, c. 26.

<sup>705</sup> 34 and 35 Hen. VIII, ch. 26, § 50.

the same privileges were granted to the county palatine of Chester, of which the preamble contains a memorable recognition and establishment of the principles which are the basis of the elective part of our constitution.<sup>706</sup> Nearly thirty members were thus added to the House of Commons on the principle of the Chester bill: that it is disadvantageous to a province to be unrepresented; that representation is essential to good government; and that those who are bound by the laws ought to have a reasonable share of direct influence on the passing of laws”<sup>707</sup>

28. *In July, 1543, King Henry married his sixth queen, Katharine Parr. Statutes made in 35 Hen. VIII (1543-4). Katharine Queen Regent during the King's absence in France part of the summer and fall of 1544.*

Henry's sixth queen was a third Katharine, which it is observed, “from its Greek derivation, *Katharos*, signifies pure as a limpid stream.”<sup>708</sup> There may be reference to Miss Strickland's pages for information of this Katharine's birth at Kendal Castle in Westmoreland, in 1513, or soon after; of her marriage when young to Edward lord Borough, of Gainsborough, and when a widow under twenty, to John Neville, lord Latimer; of her becoming his widow about a year after the execution of queen Katharine Howard; of her marriage to Henry the Eighth at Hampton court on July 12, 1543; and of her faithful performance of her duty as queen consort of England and step-mother of the children of Katharine of Arragon, Anne Boleyn and Jane Seymour.<sup>709</sup>

Statutes made in the session of Parliament begun, by prorogation,

<sup>706</sup> *Id.*, c. 13. “That the said counties have hitherto been excluded from the high court of parliament, to have any knights and burgesses within the said court, by reason whereof the inhabitants have sustained manifold damages in their lands, goods and bodies, as well as in the good governance of the commonwealth of their said country; and forasmuch as they have been bound by the acts of the said court, and yet have had no knights and burgesses therein, for lack whereof they have been often

touched and grieved by the acts of the said parliament, prejudicial to the commonwealth, quietness, rest and peace of your highness's bounden subjects, inhabiting within the said county,” &c.

<sup>707</sup> 2 Mackintosh's *Engl.*, Phila. edi. 1831, p. 201. As to Justices in Wales there may be reference to 34 Hen. VIII, c. 28, and 12 Rep. 48.

<sup>708</sup> Miss Strickland's *Queens of Engl.*, vol. 4, p. 9.

<sup>709</sup> *Id.*, p. 9 to 29.

at Westminster on the fourteenth day of January, in 35 Hen. VIII (1543-4) embrace eighteen chapters;<sup>710</sup> among which are the following:

Ch. 1. "An act concerning the establishment of the King's majesty's succession in the Imperial crown of the Realm."<sup>711</sup>

Ch. 2. "An act concerning the trial of treasons committed out of the King's majesty's dominion"<sup>712</sup>

Ch. 3. "The bill for the King's stile."<sup>713</sup>

Ch. 5. "A bill concerning the six articles."<sup>714</sup>

Ch. 6. "A bill concerning the appearance of jurors in the *nisi prius*."<sup>715</sup>

Ch. 16. "A bill for the examination of canon laws by 32 persons to be named by the King's majesty."<sup>716</sup>

During the King's absence in France, in 1544, Katharine was Queen Regent; and she and her royal step-children appear to have resided together as one family.<sup>717</sup>

*29. Death of Lord Chancellor Audley, April 30, 1544. General view of his conduct during the chancellorship.*

"Audley had the custody of the Seal for nearly twelve years; a period more disgraceful in the annals of England than any of a similar extent. Within it were comprehended the King's divorce from one queen, after a union of 22 years, under pretence of a scruple of conscience; the repudiation of another, after" brief "intercourse, on the mere ground of personal antipathy; the execution of two others, one of whom was sacrificed to obtain a new partner; and innumerable judicial and remorseless murders; those of Sir Thomas More and Bishop Fisher leading the dreadful array."<sup>718</sup>

"Of his legal acquirements there is little evidence beyond the reputation that he gained at the Inner Temple for his reading on the

<sup>710</sup> In 3 Stat. of the Realm, p. 954 to 983.

<sup>711</sup> *Id.*, p. 954 to 957. Of the "statute, which after the failure of male progeny limited the succession to Mary and Elizabeth," there is mention in 2 Mackintosh's Engl., Phila. edi. 1831, p. 199; Miss Strickland's Queens of Engl., vol. 5, pp. 36, 37.

<sup>712</sup> 3 Stat. of the Realm, p. 958; 1 'Statutes Revised,' edi. 1870, pp. 524, 525.

<sup>713</sup> 3 Stat. of the Realm, p. 958.

<sup>714</sup> *Id.*, p. 960 to 962; reciting Stat. 31 Hen. VIII, c. 14, and making further provision.

<sup>715</sup> *Id.*, p. 962. <sup>716</sup> *Id.*, p. 976.

<sup>717</sup> Miss Strickland's Queens of England, vol. 5, p. 37 to 40. Henry crossed the sea from Dover to Calais July 14, 1544, and took the field on the 25th. Boulogne surrendered to him Sept. 18, and he returned to England Octo. 1. *Id.*, p. 38 and p. 41.

<sup>718</sup> 1 State Tr., p. 440; Foss's Biogr. Jurid.



Statute of Privileges, which recommended him to the Duke of Suffolk, his first patron." Generally speaking, his judicial decisions, "were" so "much mixed up with the political questions of the day, and" so "clearly controlled by the sovereign whose will he was ready to obey," that but little "weight" is "attached to them."<sup>719</sup>

"His interpretations of the law on the various criminal trials at which he presided are a disgrace not only to him but to every member of the bench associated with him, while both branches of the legislature are equally chargeable with the ignominy of passing the acts he introduced, perilling every man's life by the new treasons they invented, and every man's conscience by the contradictory oaths they imposed."<sup>720</sup>

"The only example recorded of his wit is in the application of two of 'Isop's fables' to the case of Sir Thomas More, then in the Tower for conscience sake, which he related to Alice Allington (Sir Thomas's step-daughter), to shew that the conscientious prisoner was only 'obstinate in his own conceit.' One of these was the story of the wise men who hid themselves in caves to avoid the rain which was to make all fools on whom it fell, hoping to rule the fools when the storm was over; but the fools were the more numerous and would not then be ruled. The other was of the confessions of the lion, the ass and the wolf, intimating that Sir Thomas's conscience was like that of the ass, who confessed that he had, in his hunger, taken one straw out of his master's shoe, by which he thought his master had taken cold. More on receiving a report of the interview, shewed that the first tale was a clumsy repetition of one often told to the council by Cardinal Wolsey as a reason for going to war, which fable, he adds, 'did in his days help the king and the realm to spend many a fair penny.' The second tale he proved not to be Æsop's, and utterly turned the application of both from himself to the relator."<sup>721</sup>

Audley, who "was a most zealous promoter of the suppression" of the monasteries, "secured no inconsiderable share of the confiscations, 'carving for himself in the feast of abbey lands,' as Fuller humourously remarks,<sup>722</sup> 'the first cut, and that a dainty morsel.' This was the magnificent priory of the Holy Trinity or Christ church in Aldgate, London, founded in the reign of Henry I. He pulled down the great church and converted the priory into a mansion for himself, in which he resided during the remainder of his life. It was subsequently called Duke's Place, from his son-in-law, the Duke of Norfolk. To this were next added many of the smaller priories in

<sup>719</sup> *Id.* Mr. Foss supposes that "perhaps there is one exception;" the case of *Ferrers* in 34 Hen. VIII. That case was relied on by Sir John Campbell when attorney-general in *Stockdale v. Hansard, &c.*, 2 Per. and Dav., pp. 68, 69; 9 Adol. and El. (cited in 6 Rob. Pract., ch. 62, § 9, p. 932 to 937);

and was well disposed of in the opinions of *Ld. Donnan*, C. J. 2 Per. and Dev., pp. 125, 126, and *Coleridge*, J. *Id.*, pp. 211, 212.

<sup>720</sup> Foss's Biogr. Jurid.

<sup>721</sup> *Id.*

<sup>722</sup> 1 Fuller's Worthies, edi. 1840, pp. 507, 508.

the neighborhood of Colchester. But he was not satisfied with even these extensive spoils."<sup>723</sup>

He applied for a grant of the site and lands of the dissolved abbey at Walden in Essex; saying 'I have in this world susteyned *greate damage and infamie* in serving the Kynge's Highness, which this grant shal *recompens*.' From the plunder he took his title; the king, on Nov. 29, 1538, raising him to the peerage as Baron Audley of Walden. It is stated that "the order of the Garter was soon after disgraced by his admission among its members." The opprobrium that rested on him may have been somewhat lessened by his "appropriation of part of his wealth to the restoration of the college in Cambridge which Edward Stafford, duke of Buckingham, had left incomplete; obtaining the King's license to change its name of Buckingham college to that of St. Mary Magdalen." He died April 30, 1544. His remains were deposited under a magnificent tomb erected by himself in his chapel at Walden.<sup>724</sup>

30. *Of Robert Southwell, master of the Rolls from July 1, 1541; and Thomas Wriothesley, keeper of the Great Seal from April 22, 1544, until May 3, and from that day Lord Chancellor. Stain upon his memory for torturing Anne Askew a worthy young lady; and attempting to injure her friend the Queen.*

In 1541, on July 1, *Robert Southwell*<sup>725</sup> was appointed Master of . . .

<sup>723</sup> Foss's Biogr. Jurid.

<sup>724</sup> Campbell's Lives of Chancellors, ch. 34, pp. 620, 621 of vol. 1, 2d ed. (1846), pp. 105, 106 of vol. 2, Boston ed. 1874; Foss's Biogr. Jurid. He was married first to a daughter of Sir Thomas Barnardiston of Kedington, Suffolk, and secondly to Elizabeth, daughter of Thomas Grey, Marquis of Dorset; but left no son. One of his two daughters by his last wife died unmarried. The other became the wife first of Lord Henry Dudley, a younger son of John the first, Duke of Northumberland, and secondly of Thomas, Duke of Norfolk, by whom she had a son, who erected on the ruins of Walden abbey

(which he inherited from his mother) the stately mansion called in memory of her father, Audley End." *Id.*

<sup>725</sup> His family took its name from the town of Southwell in Nottinghamshire, records of which are as old as the reign of Edward I. One of its branches was established at Felix Hall in Essex. Francis Southwell, auditor of the Exchequer to Henry VIII, married Dorothy, daughter and heir of William Tending, Esq. Their eldest son was Sir Richard Southwell, privy councillor to Henry VIII, and ancestor of the Baroness de Clifford. Their second son was Robert, who after studying at the Middle Temple became reader there in

the Rolls, and knighted. In November he was one of the king's commissioners at Calais. He had, in the distribution of estates of suppressed monasteries a grant of Bermondsey abbey; and on its site erected a capital mansion.<sup>726</sup>

During the last sickness of Lord Chancellor Audley, the Great Seal was placed, April 12, 1544, in the hands of *Thomas Lord Wriothesley*.<sup>727</sup>

The King committed it to him "to keep and exercise during the infirmity of the said Lord Chancellor, with authority of doing and exercising all and singular matters which the Lord Chancellor of England, by virtue of his office, might do and execute. But Audley

autumn 1540. His connection with the court is evidenced by entries in the books of the privy council. He was employed in Octo., 1540, to enquire into a riot in Surrey county; in January, 1541, he was one of the Masters of the Court of Requests, and was directed to search the coffers of one Mason, and provide him with bedding, &c., in the Tower; in April he was joined with the president and council of the North in a commission of Oyer and Terminer. Foss's Biogr. Jurid. <sup>726</sup> *Id.*

<sup>727</sup> His grandfather, Sir John, first noticed as Faucon herald, was advanced in the reign of Edw. IV successively to the offices of Norroy and Garter king at arms. Both of Sir John's sons were brought up to the same study—the elder, Thomas, becoming Garter; and the younger, William, being York herald and father of the chancellor. The chancellor was born at Garter court in Barbican, and educated at Cambridge. He was in 1529 clerk to the cofferer of the household, and in 1530 clerk to the signet under the king; and probably in the latter character accompanied Mr. Brereton, one of the gentlemen of the privy chamber on a message from the king to Wolsey at Southwell. He was entered at Gray's Inn in 1534;

was in 1537 appointed coroner and attorney in the common pleas; and in 1538 one of the king's secretaries, and knighted. Although he favoured those who were devoted to the old religion, by changing the rigours with which the Friars Observant were pursued, into banishment from England; yet he so accommodated himself to the king's caprices, that he was employed on several important missions, one of which was the negotiation of a treaty of marriage between Henry and Christiana, duchess of Milan, the second daughter of the king of Denmark, in which he failed. He was afterwards one of the special counsel assigned to receive the declaration of Anne of Cleves, by which she abandoned her matrimonial rights (Kal. Excheq. i, Introd. cii). He was made constable in 1540 of Southampton castle, and two years afterwards of that of Porchester; to these appointments were added the profitable one of chamberlain of the Exchequer. He was one of the commissioners for a treaty with the Emperor Charles, and was raised to the peerage by the title of Baron Wriothesley of Titchfield, in Hants, the monastery of which had been granted to him. Foss's Biogr. Jurid.; Miss Strickland's Queens of Engl., vol. 5, pp. 50, 51.

soon after dying, Wriothesley was made chancellor the third of May following."<sup>728</sup>

After that day (May 3) six months did not elapse before the special commission "dated 17 Oct. 36 Hen. VIII."

It is "to Sir Robert Southwell, Master of the Rolls, and to three Masters, reciting that the said Lord Wriothesley, then chancellor, was so continually employed by the King's commandment about his weighty affairs that he was not sufficient to dispatch, hear and determine the causes depending in chancery; and therefore the King being willing that in the absence of the chancellor justice should be done to all his subjects, he assigns the said Master of the Rolls, and three Masters, and any three or two of them, to examine and determine all matters in chancery, and that all and singular judgments and final decrees made by them, or any two of them, should be of as great and like value, efficacy, strength and virtue, as if given by the Lord Chancellor and Court of Chancery: *Provided*, that all such judgments and decrees be signed with the hands of three or two of them, and therein be presented and delivered to the chancellor, that the chancellor may likewise sign them with his hand before they are enrolled."<sup>729</sup>

After the date of this last commission but little more than six months had elapsed when, in 39 Hen. VIII, on the 9th of May, 1545, by the Lord Chancellor Wriothesley, were "orders taken as touching the Chancery;"<sup>730</sup> whereof two are as follows:

"That no injunccon nor cerciorari nor *corpus cum causa* be put to the seale by any person onles my Lord's hand be to the wrytt, except the same be granted in open court by the Maister of the Rolls in the Lord Chancellor's absence, and in that case the said Maister of the Rolls to put his hand to the said wrytt."

"That the syx clerks during the tyme of the court do stond at the barres of the chauncery, three on the one side and three on thother, gevyng attendance to the court without speking or cryeing, but when they shall be commanded by the courte."

<sup>728</sup> Legal Judic. in Ch., edi. 1727, p. 38; Foss's Biogr. Jurid.

<sup>729</sup> Ryder, vol. 15, p. 258. The language of the text is from Legal Judic. in Ch., edi. 1727, pp. 149, 150. Lord Campbell's observations are in Lives of Chancellors, ch. 35, p. 645 of vol. 1, edi. 1846, p. 128 of vol. 2, Boston edi. 1874.

<sup>730</sup> In 12 Car. 1, under Lord Keeper Coventry's order of 25th April, 1636, the Master of the Rolls (Sir Dudley Digges) made a certificate or report as to the authority of said orders. "Orders of the High Court of Chancery" (published by Geo. Williams Sanders), edi. 1845, part 1, pp. 8, 9, and p. 189 to 193.

"In the summer of 1545" William Paget (mentioned in § 10, p. 978, and § 26, p. 1049,) "negotiated, in concert with the Chancellor Wriothesley and the Duke of Suffolk, the terms of the marriage of the Princess Margaret<sup>781</sup> to Matthew Stuart, Earl of Lenox, and many other important matters relative to Scotland, and was soon after joined in commission with the Earl of Hertford to manage" the "treaty with France."<sup>782</sup>

Anne Ascue, or Askewe, daughter of Sir William Askewe of Lincolnshire, is mentioned as "a young lady of great beauty, of gentle manners and warm imagination."<sup>783</sup> Dr. Fuller, in his church history, treated of "her piety and patience when first wracked in the Tower, then burnt in Smithfield"; in another work<sup>784</sup> he says, "she went to Heaven in a chariot of fire July 16, 1546."

The whole of her offending was, in conversation saying, that 'in her opinion after a consecration of the elements in the sacrament of the Lord's supper, the substance of bread and wine still remain in them,'<sup>785</sup> and (after she was examined before the council and committed to prison on a charge of *heresy*) writing to the King, that "as to the Lord's supper, she believed as much as Christ himself had taught or the Catholic church required, but that she could not assent to his Majesty's explication of the doctrine."<sup>786</sup>

Anne was one of the Queen's maids. Miss Strickland says:

Her supposed connexion "with the Queen caused her to be singled out for the purpose of terrifying or torturing her into confessions that might furnish a charge of heresy or treason against her royal mistress." Anne's "unexpected firmness baffled this design."

"When Sir Anthony Knevet, the lieutenant of the Tower, endeavored by his directions to the jailor, to modify the ferocious, and it seems illegal, requisition of chancellor Wriothesley to inflict severe agonies on the tender but unshrinking victim, his lordship threw off his gown, and with the assistance of his pitiless accomplice, Rich,

<sup>781</sup> Sister of Henry VIII.

<sup>782</sup> Lodge's *Portr.*, vol. 2, No. 12.

<sup>783</sup> Campbell's *Lives of Chancellors*, edi. 1846, vol. 1, p. 646, edi. 1874 (Boston), vol. 2, pp. 128, 129.

<sup>784</sup> 2 Fuller's *Worthies*, edi. 1840, p. 271.

<sup>785</sup> 7 Collyer's *Engl.*, pp. 82, 83;

3 Hume's *Engl.*, ch. 33, N. Y. edi. 1851, pp. 301, 302; 2 Turner's *Hen VIII.*, edi. 1827, p. 487; 6 Lingard's *Engl.*, ch. 5, pp. 351, 352.

<sup>786</sup> Campbell's *Lives of Chancellors*, edi. 1874 (Boston), vol. 2, p. 129.

worked the rack till, to use Anne's own words, they well nigh plucked her joints asunder.<sup>737</sup> When the lieutenant of the Tower found his authority thus superseded, he promptly took boat, and proceeding to the King, indignantly related to him the disgusting scene he had just witnessed. Henry affected to express great displeasure that a female should have been exposed to such barbarity, but he neither punished the perpetrators of the outrage nor interposed his authority to preserve Anne Askew from a fiery death."<sup>738</sup>

In an attack upon the queen herself, it was thought, the chancellor *Wriothesley* was encouraged by Gardiner, bishop of Winchester, and others. It is said that a bill of articles against the queen, and a mandate for her arrest were dropped by *Wriothesley* in the gallery at Whitehall after the King's signature had been affixed; and were by one of her attendants picked up and conveyed to her. Occupying an apartment contiguous to that of the sick monarch, her shrieks and cries reached his ears, and he sent to enquire what was the

<sup>737</sup> 2 Turner's *Hen. VIII.*, ed. 1827, pp. 528, 529, notes 79 and 80. Miss Strickland's *Queens of Engl.*, vol. 5, p. 52. In the narrative transmitted by Foxe ii, 578, as the composition of Anne, the language is, "my lord chancellor and master Rich took pains to rack me with their own hands till I was nigh dead." 6 Lingard's *Engl.*, p. 353, note. Mr. Froude says this is "a dreadful truth, related at first hand from the pen of the sufferer herself." 4 Froude's *Engl.*, ch. 27, p. 460. Lord Campbell says: "I am sorry for the honour of the law to say that Griffin, the Solicitor-General, was present at this scene, and instead of interceding for Anne, recommended himself to the Chancellor by tightening the rope with his own hand to add to her torture." *Lives of Chancellors*, ch. 35, p. 647, note, 2d ed. (1846.) In the Boston ed. of 1874, vol. 2, p. 130, are these additional words: "This is said to be the only instance of a woman being put to the torture in England. See Jar-

dine's *Reading on Torture*, p. 65."

<sup>738</sup> Miss Strickland's *Queens of Engl.*, vol. 5, p. 52. In the account which follows, of Anne being "borne to her funeral pile," it is said "her fearless demeanour encouraged and strengthened the resolution of the three men who shared with her the crown of martyrdom." *Id.*, p. 53. The 16th of July, 1546, was the day on which they were chained to a stake and burnt to death. 4 Froude's *Engl.*, ch. 23, p. 461. Sir George Blagge, who was in the same condemnation, was a great favorite with the king, who in moments of familiarity honoured him with the appellation of his 'pig.' Henry on being informed of his condemnation sent for *Wriothesley*, and commanded him to draw out a pardon. Blagge on his release flew to thank the King, who seeing him cried out, 'Ah! my pig, are you here safe again!' 'Yes, sire,' said he, 'and if your Majesty had not been better than your bishops, your pig had been roasted ere this time.'

matter. The messenger was informed by the queen's physician that she was dangerously ill, and that her sickness was caused by distress of mind. The King being then unable to walk was carried in a chair into her apartment; and there evinced much sympathy. In this interview Katharine behaved in so humble and endearing a manner, and so completely adapted herself to the King's humour, that in the excitement caused by the reaction of his feelings, Henry let her physician know of the plot against her life. The physician acted as mediator; and next evening the queen found herself well enough to return the King's visit; being attended to his chamber by her sister, lady Herbert, and the King's young niece, lady Jane Grey. Henry welcomed her very courteously, but soon turned the conversation to what had been a subject of controversy. She avoided the snare by observing that she was but a woman, with the imperfections of her sex, and in matters of difficulty "must refer herself to his majesty's better judgment, as to her lord and head; for so God hath appointed you" (continued she) "as the supreme head of us all, and of you, next under God, will I ever learn."

"Not so, by St. Mary," said the King, 'ye are become a doctor, Kate, to instruct us, and not to be instructed of us, as oftentime we have seen.' 'Indeed,' replied the queen, 'if your majesty have so conceived, my meaning has been mistaken, for I have always held it preposterous for a woman to instruct her lord; and if I have ever presumed to differ with your highness on religion, it was partly to obtain information for my own comfort, regarding certain nice points on which I stood in doubt, and sometimes because I perceived that in talking, you were better able to pass away the pain and weariness of your present infirmity, which encouraged me to this boldness, in the hope of profiting withal, by your majesty's learned discourse.' 'And is it so, sweetheart?' replied the King, 'then are we perfect friends.' He then kissed her with much tenderness, and gave her leave to depart."

"On the day appointed for her arrest, the King being convalescent, sent for the queen to take the air with him in the garden. Katharine came, attended as before by her sister, lady Jane Grey and lady Tyrwhyt. Presently the lord-chancellor Wriothesley, with forty of the guard, entered the garden, with the expectation of carrying off the queen to the Tower, for he had not received the slightest intimation of the change in the royal caprice. The King received him with a burst of indignation, saluted him with the unexpected address of 'Beast, fool and knave,' and sternly withdrawing him from the vicinity of the queen, he bade him 'avaunt from his presence.'

Katharine when she saw the King so greatly incensed with the chancellor, had the magnanimity to intercede for her foe, saying 'she would become a humble suitor for him, as she deemed his fault was occasioned by mistake.' 'Ah! poor soul,' said the King, 'thou little knowest, Kate, how evil he deserveth this grace at thy hands. On my word, sweetheart, he hath been to thee a very knave.'<sup>739</sup>

31. *The King's last appearance in parliament was in that of 37 Hen. VIII (1545); its statutes and his speech. Of his weakness in 1546.*

Statutes made in the Parliament begun at Westminster on Nov. 23, in 37 Hen. VIII (1545), embrace twenty-five chapters;<sup>740</sup> among which are the following :

Ch. 1. "An act for the offices of the *custos rotulos*."<sup>741</sup>

Ch. 8. "An act that an indictment lacking these words, *vi et armis*, shall be sufficient in law."<sup>742</sup>

Ch. 9. "An act against usury."<sup>743</sup>

Ch. 17. "An act that the Doctors of the Civil Law may exercise ecclesiastical jurisdiction."<sup>744</sup>

On Dec. 24 (1545), when the business of this parliament was over, Henry, instead of his chancellor, made the answer, wherein Mr. Turner observes: "We have an exhibition of some of the features of his mind and sentiments at the latter period of his life, in his own

<sup>739</sup> 7 Coll. Engl., p. 83 to 86; 3 Hume's Engl., ch. 33, p. 302 to 304; 1 Lodge's Portr., No. 17. Although John Fox is cited as authority, yet Dr. Lingard says it is "a question among the more ancient writers, whether the King was in earnest. By some the proceeding has been represented as a scheme of his own contrivance, to wean his wife from an attachment to doctrines which might in the sequel conduct her to the stake or the scaffold." 6 Lingard's Engl., ch. 5, pp. 351, 352. In most respects the account in Collyer, Hume and Lodge, is similar to that in Campbell's Lives of the Chancellors, ch. 35, p. 648 to 650 of vol. 1, 2d edi. (1846,) p. 130 to 133 of vol. 2d, Boston edi. 1874; and in Miss

Strickland's Queens of Engl., vol. 5, p. 52 to 58. Recently it has been said "the popular legend can pretend to no *authenticity of detail*." Froude's Engl., ch. 23, p. 455. The author of the present volume has not had an opportunity of examining the volumes of Fox, Herbert, Speed, Soames, Tytler and Rapin, which are referred to by Miss Strickland for what is above extracted from her work.

<sup>740</sup> 3 Stat. of the Realm, pp. 984 to 1,032.

<sup>741</sup> *Id.*, p. 985; 1 'Statutes Revised,' edi. 1870, pp. 524, 525.

<sup>742</sup> 3 Stat. of the Realm, pp. 995, 996.

<sup>743</sup> *Id.*, pp. 996, 997.

<sup>744</sup> *Id.*, p. 1,009.



language, which has the air of being extemporaneous." This was his last appearance in parliament.<sup>745</sup>

On Aug. 31, 1546, Sir Anthony Denny<sup>746</sup> "was joined in a commission with two other trusty servants of the crown to sign all public instruments in the King's name. Henry had fallen into such weakness as to be incapable of performing that office with his own hand."

Mr. Lodge thinks it probable "that this high trust was exercised by Denny and his colleagues merely for the short interval between the commencement of the King's inability and the completion of the stamp."<sup>747</sup>

32. *Part taken by Southwell, Master of the Rolls, and by Lord Chancellor Wriothesley in the prosecution of the Duke of Norfolk and his son Henry Howard, Earl of Surrey. In Jan., 1546-7, the son perished on the scaffold; the father survived the King.*

Of proceedings in the reign of Henry VIII for capital crimes,<sup>748</sup> one of the last was against Thomas Howard, third duke of Norfolk, and his son, Henry Howard, earl of Surrey;<sup>749</sup> a son, Sir James Mackintosh, says :

"So justly renowned by his poetical genius, which was then surpassed in his own country by none but that of Chaucer; by his happy imitations of the Italian masters; by a version of the *Æneid*, of which the execution is wonderful, and the very undertaking betokens the consciousness of lofty superiority; by the place in which we are accustomed to behold him at the head of the uninterrupted series of English poets—that we find it difficult to regard him in those inferior points of view of a gallant knight, a skilful captain,

<sup>745</sup> 2 Turner's Henry VIII, ed. 1827, p. 539. There is an account of the speech in *Id.*, pp. 540, 541; and in Campbell's *Lives of Chancellors*, ch. 35, p. 651 of vol. 1, 2d ed. (1846,) p. 134 of vol. 2, Boston ed. 1874; 4 Froude's *Engl.*, p. 448 to 452.

<sup>746</sup> A picture of Sir Anthony, from the original of Holbein, in the collection of the Earl of Radnor, is in Lodge's *Portr.*, vol. 1, No. 19.

<sup>747</sup> "Which it has been pretty well ascertained that Henry used to apply with his own hand." *Ibid.* Under what circumstances it was applied by another see *Duke of Norfolk's case*,

1 Dy. 93 a; stated *post*, in ch. 32, § 5.

<sup>748</sup> Of "proceedings against various persons in the reign of Hen. VIII for treason in denying the King's supremacy; and other capital crimes principally relating to religion," there is an account in 1 *State Tr.*, p. 469 to 484, taken from Burn. Reform. 351, *et seq.*

<sup>749</sup> 7 Collyer's *Engl.* p. 86 to 89; 3 Hume's *Engl.*, ch. 33, p. 304 to 307; 2 Turner's *Hen. VIII*, ed. 1827, p. 514 to 516; 6 Lingard's *Engl.*, ch. 5, p. 356 to 362; Miss Strickland's *Queens of Engl.*, vol. 5, p. 59 to 61; 4 Froude's *Engl.*, p. 466 to 478.

and an active statesman." The earl, "with his father, was on the 12th of December, 1546, imprisoned in the Tower. The legal ground of the proceeding was the sweeping section of more than one recent statute which made it high treason 'to do anything by word, writing or deed, to the scandal or peril of the established succession to the crown.' The only overt act alleged" was "having assumed the armorial bearing of Edward, the confessor, 'which had been hitherto exclusively used by his majesty, and his predecessors, kings of England.' " <sup>750</sup>

In the proceedings <sup>751</sup> some part was taken by the Master of the Rolls (*Robert Southwell*) and by the Lord Chancellor *Wriothesley*. Lord Campbell says of *Wriothesley*, that instead of resisting the prosecution, he sanctioned and promoted it. <sup>752</sup> On the absurd charge, and on insufficient evidence, Surrey was, in January 1546-7, at Guildhall tried and convicted on the 13th of high treason; and on the 19th beheaded on Tower Hill. A fine picture of him, from the original in the Duke of Norfolk's collection, accompanies the article in *Lodge's Portr.*, vol. 1, No. 15, wherein is this statement:

"His body was interred near the scene of his death, in the church of All-hallows, Barking, but was removed from thence, in the year 1614, to Framlingham, in Suffolk, where it lies under a superb monument, erected to his memory by his second son Henry, Earl of Northampton."

The Duke of Norfolk, against whom there was a bill of attainder, escaped by King Henry's death on the night before that morning on which the Duke's life was to have been taken, but the Duke remained a prisoner during the reign of Edw. VI. <sup>753</sup> Lord Campbell condemns the Lord Chancellor *Wriothesley's* course both as to the son and the father,—

"Making himself accessory to the murder of the son, and not

<sup>750</sup> 2 Mackintosh's Engl., Phila. edi. 1831, pp. 198, 199; 1541-2, 33 Hen. VIII, ch. 14, p. 144 of *Bailey's Success.* to Engl. Crown, edi. 1879. Mr. *Bailey* believes the accusations against Surrey to have been true. *Id.*, p. 138 and p. 149.

<sup>751</sup> 1 State Tr., p. 452 to 474.

<sup>752</sup> *Lives of Chancellors*, ch. 35, p. 653 of vol. 1, 2d edi. (1846,) pp. 135, 136 of Boston edi. 1874.

<sup>753</sup> *Howard Family*, edi. 1769, p. 8 and p. 28; 1 *Walpole's royal and noble authors*, p. 96; 6 *Lingard's Engl.*, ch. 5, p. 359 to 362; 2 Mackintosh's Engl., Phila. edi. 1831, p. 198; *Miss Strickland's Queens of Engl.*, vol. 5, pp. 60, 61, and p. 188, *note*. His discharge in Mary's reign is mentioned in vol. 2, ch. 32, § 1 and § 5.

having likewise to answer for that of the father, only by being suddenly freed from the inhuman master, whose commands he was afraid to disobey or question."<sup>754</sup>

33. *Of Edward Seymour, Earl of Hertford, uncle to the King's son Edward; and the relations between Hertford and the Earl of Surrey. By the King's will made in December, 1546, there was given to Hertford a power which was not given to Surrey or his father. Of King Henry's death in Jan. 1546-7; of proceedings in parliament on the 29th and 31st; and his vault at Windsor castle. Of Queens Jane Seymour and Katharine Parr; and Henry's character.*

After the King's marriage with Jane Seymour and the act of settlement thereupon, (28 Hen. VIII, c. 7, § 9,) her brother Edward was raised (June 5, 1536,) to the dignity of Viscount Beauchamp, and on Octo. 18, 1537, (being a few days after Prince Edward's birth,) was created Earl of Hertford. Subsequently he received from time to time new marks of the king's favor and confidence, and was in important positions.<sup>755</sup> Speaking of the Earl of Surrey, in 1545, Mr. Lodge says:

"It has been thought that Hertford, then the rising favourite, and of consequence jealous of the Howards, had prejudiced the King against him. Certain it is that Surrey, irritated to the utmost by the revocation of his command in France, had indulged in bitter and contemptuous remarks and sarcasms on Hertford, to whose influence he ascribed it, and had even menaced him with revenge under a new reign, a threat most offensive to Henry, whose health was then daily declining; and Hertford is supposed to have heard and repeated those speeches to the King. These, however, are but conjectures; all that can be safely affirmed is, that amidst this obscurity the downfall of Surrey originated."

That steps for it were taken in the absence from London of the premier (Norfolk) is manifest; Dec. 12, 1546, the day on which Surrey was suddenly arrested, being also the day of the arrest of the Duke, his father, *who had on that day arrived in London.*<sup>756</sup> The act of settlement, (23 Hen. VIII, c. 7, § 9,) and the statute of 35 Hen.

<sup>754</sup> 1 Campbell's *Lives of Chancellors*,  
*ubi supra*.

<sup>755</sup> 3 Hume's *Engl.*, N. Y. edi. 1851,

p. 240, p. 292, and p. 298; Lodge's  
*Portr.*, vol. 1, No. 15.

<sup>756</sup> *Id.*, vol. 1, No. 15.

VIII, being remembered, there was before the end of the same December executed Henry's will, whereby, during Edward's minority, powers of government were vested in executors. Of them one was the Earl of Hertford, and none was the Duke of Norfolk or the Earl of Surrey.<sup>757</sup>

Recognition of this instrument, as the act of a man of sound mind and a valid will, is a serious difficulty in the way of ascribing to insanity, as Mr. Lodge thinks "it were charity to the memory of the tyrant" to do, his "last superlative enormity,"—the arrest and condemnation to death of "the Duke of Norfolk, and of his admirably accomplished son, the Earl of Surrey."<sup>758</sup>

On the night of Friday, the 28th—being about two in the morning of the 29th—of January, 1546–7, in the fifty sixth year of his age, and the thirty-eighth of his reign, Henry the Eighth died in his palace at Westminster.<sup>759</sup> Sir James Mackintosh says:

"On Saturday, the 29th, parliament met according to their adjournment and transacted ordinary business. It was not till Monday, the last day of January, 'that in presence of all the peers, and of the knights and burgesses, Wriothesley, the chancellor, announced to them the decease of their late dread lord.'—"At last, however, when they had composed their lamentations and consoled their grief by calling to mind the promise of ability and virtue already given by Prince Edward, and having heard a great part of the king's testament read by Sir William Paget, Secretary of State, the present parliament was declared by the lord chancellor to be dissolved by the demise of the crown."<sup>760</sup>

<sup>757</sup> 3 Hume's Engl., N. Y. ed. 1851, ch. 34, p. 320; 2 Mackintosh's Engl., Phila. ed. 1831, p. 199. Sir James Mackintosh says: "As the selection was made at the very moment of the downfall of the house of Howard (the leaders of the old nobility and the chiefs of the old faith), the preponderating influence of the Earl of Hertford must be supposed to have presided over the choice of executors." *Id.*, ch. 9, p. 206.

<sup>758</sup> Of whom he says: "They were suddenly arrested, and without a single proof of guilt, indeed almost without a single specific charge, arraigned of

high treason, and condemned to die." 1 Lodge's Portr., No. 16.

<sup>759</sup> That "at two o'clock in the night, between the 27th and 28th of January, 1547, Henry VIII breathed his last," is the language in 2 Mackintosh's Engl., Phila. ed. 1831, p. 198; but the statement in the text is thought more accurate. 7 Collyer's Engl., ed. 1775, p. 89; 3 Hume's Engl., ch. 33, N. Y. ed. 1851, p. 307; 6 Lingard's Engl., Boston ed. 1855, p. 302; Miss Strickland's Queens of Engl., Phila. ed. 1857, vol. 5, p. 62.

<sup>760</sup> 2 Mackintosh's Engl., Phila. ed. 1831, p. 199.

Henry's body was conveyed to Windsor castle and laid by Jane Seymour's side in a vault of St. George's chapel.<sup>761</sup> His will bears high testimony to Queen Katharine Parr; it contains a bequest to her "for the great love, obedience, chastity of life and wisdom being in our forenamed wife and queen."<sup>762</sup>

In the work of a "Master of English history"<sup>763</sup> is the following passage:<sup>764</sup>

Henry II is the first of the three great kings who have left on the constitution indelible marks of their own individuality. What he reorganized Edward I defined and completed. The Tudor policy, which is impersonated in Henry VIII, tested to the utmost the soundness of the fabric: the constitution stood the shock, and the Stewarts paid the cost of the experiment. Each of the three sovereigns had a strong idiosyncrasy, and in each case the state of things in which he acted was such as to make the impression of personal character distinct and permanent."<sup>765</sup>

That Henry VIII has made "the impression of personal character distinct and permanent";—that he had a strong idiosyncrasy;

<sup>761</sup> Miss Strickland's *Queens of Engl.*, vol. 4, pp. 224, 225, vol. 5, pp. 64, 65.

<sup>762</sup> *Id.*, p. 63. During her royal widowhood she resided at her fine jointure house at Chelsea, on the banks of the Thames. *Id.*, p. 66. But that widowhood was brief: in her thirty-fifth year she was still handsome, and she consented to a private marriage with a former lover, Sir Thomas Seymour, brother of Queen Jane; this event took place in May, (1547,) but was not made public till the end of June. *Id.*, p. 68. Sudely or (Sudley) castle became their place of residence. It is in Gloucester county, and is about eight miles from Cheltenham, and 95 from London. Their daughter Mary was born at Sudley Castle Aug. 30, 1548; on the seventh day after the child's birth the mother died (Sept. 5). She was interred in the chapel of Sudley; its then and present condition are mentioned in *Id.*, p. 95,

*et seq.* Her collection of prayers and meditations was printed in 1545, 1546, 1547, 1548, and 1563; and was republished in 1831. Her 'Lamentations of a Sinner,' written during her marriage with King Henry, was after her death found among her papers, and published (1548 and 1563) with a preface by Secretary Cecil (afterwards Lord Burleigh). Allibone's Dict. Miss Strickland remarks that "this little volume, next to the writings of Sir Thomas More, affords one of the finest specimens of English composition of that era." *Queens of Engl.*, vol. 5, pp. 34; 35.

<sup>763</sup> Pronounced "the greatest monument of English historical scholarship." Preface to vol. 5 of *Freem. Norm. Conq.*, edi. 1876.

<sup>764</sup> Only the first part of which is in ch. xi, § 18, p. 213.

<sup>765</sup> 1 Stubbs's *Const. Hist.*, ch. 12, p. 446.

and that he has left "indelible marks of" his "own individuality:"—these facts have come down to us from men who had ample opportunity of knowing them—his two great chancellors, Wolsey<sup>766</sup> and More. When complimented by Mr. Roper 'upon seeing the King walk with his arm about his neck,' More said:

"I thank our Lord. I find his grace a very good lord indeed, and I do believe he doth as singularly favour me as any subject within this realm. Howbeit, son Roper, I may tell thee, I have no cause to be proud thereof; for if my head would win him a castle in France, it should not fail to go."<sup>767</sup>

Henry "bore as great personal affection and regard to More, as his imperious mind, the sport of passions, was susceptible of towards a man who in any particular opposed his violent inclinations."<sup>768</sup> More appreciated that 'imperious mind,' when Cromwell, after entering Henry's service, came with a message from him to More. Then after they had talked together, and before Cromwell went away, More said to him:

"You are entered into the service of a most noble, wise and liberal prince. If you will follow my poor advice you shall in your counsel-giving to his majesty ever tell him what he ought to do, but never what he is able to do";—"for if a Lion knew his own strength, hard were it for any man to rule him."<sup>769</sup>

This excellent advice was not followed.

"The absolute, uncontrolled authority which" Henry "maintained at home, and the regard which he acquired among foreign nations, are circumstances which entitle him, in *some* degree, to the appellation of a great prince; while his tyranny and barbarity exclude him from the character of a good one. He possessed indeed great vigor of mind, which qualified him for exercising dominion over men; courage, intrepidity, vigilance, inflexibility; and though these qualities lay not always under the guidance of a regular and solid judgment, they were accompanied with good parts and an extensive capacity."<sup>770</sup>

<sup>766</sup> Wolsey's view is in § 6, p. 965.

<sup>767</sup> I Seward's Anecdotes, p. 58. It was probably after More's execution that Erasmus observed: "When my friends have congratulated me that I had a friend like More, placed in so eminent a station, I was used to say that I would never congratulate him upon his in-

crease of dignity till he himself told me that I might." 3 *Id.*, p. 97.

<sup>768</sup> 3 Hume's Engl., ch. 30, p. 211.

<sup>769</sup> 3 Seward's Anecdotes, p. 101.

<sup>770</sup> 3 Hume's Engl., ch. 33, p. 308 of N. Y. edi. 1851; 7 Collyer's Engl., edi. 1775, p. 91.

To Sir Walter Raleigh is ascribed the language that "if all the patterns of a merciless tyrant had been lost to the world, they might have been found in this prince."<sup>771</sup> Long since Sir Walter's time Henry VIII has been mentioned as "a man who was known never to yield or to forgive."<sup>772</sup> The Rev. J. Granger observes :

"He was more governed by vanity and caprice than principle; and paid no regard to mercy, not even to justice when it stood in the way of his passions."<sup>773</sup>

Sir James Mackintosh supposes,

That "had he been only severe and stern, instead of plunging into barbarism and butchery, his services might be commended, and some allowance might be made for the necessity of curbing uncivilized men by rough means."<sup>774</sup>

Lord Campbell says:

"We may be amused by a defence of Richard III, but we can feel only indignation and disgust at an apology for Henry VIII, whose atrocities are as well authenticated as those of Robespierre, and are less excusable."<sup>775</sup>

<sup>771</sup> These words are quoted in Miss Strickland's *Queens of Engl.*, vol. 4, p. 328.

<sup>772</sup> 7 Collyer's *Engl.*, and 3 Hume's *Engl. ubi supra* in note.

<sup>773</sup> 1 *Biogr. Hist.*, edi. 3d (1779), p. 77.

<sup>774</sup> 2 Mackintosh's *Engl. Phila. edi.* 1831, p. 202.

<sup>775</sup> Campbell's *Lives of Chancellors*, ch. 33, p. 589 (note) of vol. 1, 2d edi. (1846), p. 75 (note) of vol. 2, Boston edi. 1874.

## APPENDIX A

(To Ch. XXX, § 13, p. 991 and note.)

*Letter of Jan. 22, 1864, from Lord Wensleydale as to Copyright in England; and as to Ampthill Park.*

The author, when occupied with matters treated of in 'Robinson's Practice,' received from Lord Wensleydale an interesting letter dated "Ampthill Park, Ampthill, 22 Jan., 1864;" from which the following is extracted:

"I am glad there is a chance of seeing you here, and shall not be sorry that the law as laid down in *Jefferys v. Boosey*,<sup>1</sup> brings you here on so good an errand. I am quite satisfied that the judges, with whom I concurred, laid down the law correctly as to the Stat. of Anne applying only to English subjects, and that the term, 'English subjects,' will be liberally understood; but whether if a Frenchman came over on one day from Calais to Dover, published there his work on the next day, and then went back home, I am not so sure; and I advise you if you think it worth while to come to pay a longer visit.<sup>2</sup> If I should then happen to be in the country (that is to say not in London) I shall be very glad if you would pay me a visit here.

Where I have a pretty country to shew you, and have a poem of Mr. Luttrell's on Ampthill with notes, which will give you full particulars of its previous history. The old castle, on the top of the eminence, close by, was built by Lord Fanhope; and afterwards, in the time of Hen VIII, it was in the Crown. Queen Catharine resided there during the proceedings for her divorce. The estate afterwards became the property of Lord Ashburnham; and Lord Ashburnham built the house in which I live; then it was transferred to Lord Upper Ossory, left by him to Lord Holland. Lord Holland bequeathed it to his widow and children; they sold it to the Duke of Bedford, and his Grace let it to me in effect for my life and that of Lady Wensleydale."

The author never found it convenient to be in England except in 1853 (which was more than ten years before the letter just mentioned), and never had the pleasure of seeing Lord Wensleydale or Ampthill Park.

<sup>1</sup> 30 Engl. L. and Eq. 1, 4 Ho. of L. 815. (1 Rob. Pract., ch. 27, § 3, p. 145, and Preface, p. vi.)

<sup>2</sup> The International Copy-right Amendment Act (7 Vict., ch. 12, § 1,) was,

since Lord Wensleydale's letter, under consideration of the Queen's Bench in *Wood v. Boosey, &c.*, L. R. 2 Q. B., 345; and of the Exchequer Chamber in *S. C.*, L. R. 3 Q. B., 223.



## APPENDIX B

(To Ch. XXX, § 26, p. 1049.)

*As to removal of remains of James V of Scotland; especially as to a rib said to have been removed by a medical student, and to be now in Virginia, in Louisa county.*

"Holyrood House" was a religious establishment long before it became a royal residence. It was one of the numerous monasteries founded by the Scottish King David I.<sup>1</sup>

"In 1528 James V made great additions to the buildings"; it is said he "rebuilt the whole from the foundation."<sup>2</sup>

In 1544, "when Leith and Edinburgh were taken and sacked by the Earl of Hertford (afterwards the Protector Somerset), the whole of the' abbey "church was burned to the ground with the exception of the nave, which was subsequently used as a chapel."<sup>3</sup>

To this spot Dr. Samuel Johnson was carried in 1773.<sup>4</sup> Boswell says:

"I spoke with peculiar feeling of the miserable neglect of the chapel belonging to the palace of Holyrood-house, in which are deposited the remains of many of the kings of Scotland, and of many of our nobility. I said it was a disgrace to the country that it was not repaired."<sup>5</sup>

Perhaps during the existence of such neglect there was a "removal of the remains of James V." To ascertain whether there was such removal before the 7th of March, 1760, may give pleasure to some of those who may read part of a letter dated 'Glenora, Virginia, May 5th, 1881,' from Mr. W. G. T. Nelson to his nephew, R. E. Nelson, Jr., a professor in Maryland Agricultural College, which the latter has delivered to the author of the present work. The writer of the letter makes as to the remains of James V, and as to Dr. Robert Honyman, the following interesting statement:

"I have seen in his' (Dr. H's) "own hand-writing that he left Kinneff in Kincardineshire, Scotland, on the 7th of March, 1760, and took passage at Leith on the frith of Forth, in a vessel bound for Charleston, South Carolina. After a voyage of more than three months, he landed at Charleston May 24th. Subsequent to that period he was a Surgeon in the British Navy, but for what length of time I do not know. He visited his relatives at Penrith, in Northumberland, England, in 1774. At the breaking out of the war of 1776, he was a resident

<sup>1</sup> Penny Magazine for 1832, Aug. 11, p. 188. edge for 1835, p. 35 and p. 39.

<sup>2</sup> *Id.*

<sup>4</sup> Boswell's Johnson, ed. 1835, p. 35.

<sup>5</sup> *Id.*, p. 106.

<sup>3</sup> *Id.*; also Pinnock's Guide to Knowl-

of Hanover county, Va., and served as Surgeon in the American army, during which time he wrote the Diary spoken of in your letter. After the close of the war he located in Hanover, on Little River, at a place he called "Kinneff," and practised medicine for many years with eminent success in Hanover and the adjacent counties. My Father, who knew him intimately, has often told me that Dr. Honyman was one of the best classical scholars he ever knew, and was likewise well read in almost every department of the literature of his day. He was a graduate of Medicine in one of the Scotch Universities (Edinburgh I believe), and was vastly superior in information and understanding to any physician in the region of country in which he practised. He was so fond of the Classics, that he carried a copy of Juvenal in his pocket, wherewith to amuse himself in his leisure hours.

While a Medical Student he was present at the removal of the remains of James the Fifth of Scotland, and found an opportunity to secrete one of the *ribs* of the Royal Skeleton, which he *brought* with him to this country, and always regarded it as a sacred relic. In his last will he bequeathed it to his only son, Dr. Robert Bruce Honyman.

My Father, as executor of Dr. H., delivered the *rib* to Robert Bruce Honyman, and took his receipt for the same, which is now in my possession. Dr. Robert B. Honyman died, leaving a widow, but no children. His wife afterwards married, and died a few years ago, leaving descendants by her last marriage. The *rib* is now in Louisa county, in possession of some of those descendants. A strange destiny for one of the ribs of 'Snowdown's Knight and Scotland's King.' But what is strange that happens to a Stuart! Dr. Honyman died in the year 1824, at a very advanced age."

# INDEX.

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 3 Fuller's Worthies ed. 1840. p. 12; Watkins's Biogr. Dict. ed. 1822, tit.  
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\*Pepys, in his Diary, under date of 1665, April 16 (pp. 237, 238 of a modern reprint), has the following:

"Captain Taylor can, as he says, shew the very original charter to Worcester of King Edgar's wherein he styles himself '*Rex Marium Britannie, &c.*'; which is the great text that Mr. Selden and others do quote."

- REYNOLD, Abbot of St. Peter's in Gloucester county; in parliament of 29 Hen. VI (1450), petition against him; Dec., made bishop of Hereford, 801 (and n), 802
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